

the "Regulations of the California Department of Food and Agriculture." "Well-matured" means a condition distinctly more advanced than "mature."

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## 7 CFR Part 917

[Docket No. AMS-FV-88-055IR]

### Fresh Pears, Plums, and Peaches Grown in California; Size Requirements and Maturity Regulations for Peaches

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule changes the size regulations established for California peaches. The coverage of the variety-specific size requirements will be changed by removing two varieties, no longer produced in significant quantities, from the variety-specific size list. Also size requirements will be modified for varieties of peaches not subject to variety-specific size requirements which are shipped November 1 through July 2. This is intended to bring these requirements into conformity with those in effect for shipments during the July 3 through October 31 period. In addition, this rule specifies maturity requirements and maturity variance procedures. This action is designed to facilitate peach maturity determinations and promote marketing of the crop.

**DATE:** The interim final rule becomes effective May 27, 1988. Comments which are received by July 11, 1988 will be considered prior to issuance of the final rule.

**ADDRESS:** Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Three copies of the written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. The comments should reference the date and page number of this issue of the Federal Register.

#### FOR FURTHER INFORMATION CONTACT:

Jerry N. Brown, Marketing Order Administration Branch, Fruit and

Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone 202-475-5464.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Order No. 917 (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 650 handlers of plums, peaches, and nectarines subject to regulation under marketing orders (7 CFR Parts 916 and 917), and there are approximately 2,030 producers of these commodities in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of such fruit may be classified as small entities.

Shipments of California peaches are regulated by grade, maturity, and size under Peach Regulation 14 (7 CFR 917.459, as amended and published in the Federal Register on April 29, 1987, 52 FR 15488). A proposed rule concerning the size and maturity regulations was published in the Federal Register on April 18, 1988, (53 FR 12694). Comments were received concerning the proposed maturity requirements. Proposed changes to § 917.459 were recommended by the Peach Commodity Committee and the Department.

This interim final rule is based upon the committee's recommendation, information submitted by the committee, comments received both supporting and opposing the action, and other available information.

Inspected shipments of California peaches for the 1987 season totalled 13,854,000 packages and they were primarily sold in the fresh market. In 1987, the production value of California freestone peaches (fresh and processed) and clingstone peaches was about \$68,252,000 and \$95,612,000, respectively. Although this interim final rule would continue to impose requirements on the handling of peaches, exemptions from the inspection and certification requirements would continue. These exemptions include provisions for the shipment of minimum quantities of the fruit.

The proposal included changes in the minimum size requirements for peaches. No comments were received concerning such changes.

Accordingly, this action adopts the proposed size requirements described below to recognize the interest of California peach growers and handlers in maintaining the quality of peaches they market.

To implement the peach committee's size recommendations, paragraph (a)(5) of § 917.459 will be revised to remove two varieties no longer produced in significant quantities from variety-specific size requirements. Variety-specific size regulations for peaches are implemented when the peach variety is produced in commercially significant quantities; i.e., shipments in excess of 10,000 packages during a season. When varieties are no longer produced in significant quantities (less than 5,000 packages during the previous season), they are removed from the variety-specific size requirements, but are subject to minimum size requirements established for non-listed varieties. The quantities used in making these determinations are the same as those used in prior seasons. These requirements are specified in paragraphs (a), (b), and (c) of § 917.459. Specifically, the Summerset and Windsor varieties of peaches will be removed from the variety-specific size requirements in that paragraph. Shipments of the varieties that will be removed from the variety-specific size requirements fell below 5,000 packages during the 1987 season.

Paragraphs (b) and (c) of § 917.459 require all varieties of peaches not subject to the variety-specific size requirements to be subject to minimum size requirements. The total shipments



of these peaches are significant enough to warrant coverage, even though shipments of the individual varieties of them do not exceed 10,000 packages. Paragraph (b) covers shipments of these varieties during the period November 1 through July 2, and paragraph (c) covers shipments during the period July 3 through October 31.

For shipments during the July 3 through October 31 period, paragraph (c) currently specifies minimum size requirements for peaches packed in No. 22D standard lug boxes, requirements for these peaches packed in No. 12B standard fruit (peach) boxes, and 16-pound representative sample count per pound requirements for peaches packed in other containers. Paragraph (b) specifies No. 22D standard lug box requirements and 16-pound representative sample count per pound requirements, but does not specify size requirements for fruit packed in No. 12B standard fruit (peach) boxes. To foster consistency of regulation throughout the year, size requirements will be added to paragraph (b) for peaches packed in No. 12B standard fruit (peach) boxes for shipment during the period November 1 through July 2. The peaches so packed will have to be of a size that will pack, in accordance with the requirements of standard pack, not more than 65 peaches in the box. These are the same requirements as specified in paragraph (c) for shipments during the July 3 through October 31 period. With the change, such peaches packed in No. 12B standard fruit (peach) boxes will no longer be subject to the 16-pound representative sample count per pound requirements, just the pack requirements.

Further, the proposal included revisions in paragraph (a) of § 917.459 to clarify the peach maturity requirements and simplify the maturity determination system currently used by the peach industry. Among other things, the revision of paragraph (a) specified that no handler could ship peaches unless they are at least "well-matured," as defined in paragraph (d) and specified the role of Federal or Federal-State inspectors in making "well-matured" determinations.

It was proposed that the first sentence of paragraph (a)(1) be revised to read: "Any lot or package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade, except that the peaches shall be 'well-matured,' rather than 'mature,' but not over-ripe or shriveled." This change was intended to clarify the fact that all peaches marketed under this program must be "well-matured," rather than

"mature" as defined in the U.S. grade standards for peaches. Since May 16, 1980 (45 FR 32310; May 16, 1980) peaches have been required to be "well-matured" rather than "mature," and this requirement has been implemented by the Federal-State Inspection Service since that time.

In addition to specifying that peaches must be "well-matured," the proposed change defined "well-matured" as a condition distinctly more advanced than "mature." According to the U.S. grade standards, a peach is considered mature when it has reached the stage of growth which will insure a proper completion of the ripening process. This is a minimum standard of maturity which was in effect before the more recent advances in handling and distribution techniques and does not preclude inspecting to a higher degree of maturity. In 1979 the committee reported that higher maturity standards were necessary to satisfy trade demand, particularly in eastern markets. Comments discussed later support the contention of proponents that the "well-matured" requirement has resulted in more consumer acceptance and expansion of markets for California peaches.

To ascertain compliance with the "well-matured" standard with regard to each variety of peaches, various tests are used. Since 1980, the Federal-State Inspection Service, based on its expertise, has been primarily responsible for determining which specific test or tests should be used for each variety of peaches and which test level (e.g., particular color chip) is appropriate for each variety. When the Federal-State Inspection Service has sufficient experience with a variety to determine that a particular test or tests and a particular test level should normally be appropriate for the entire production area for every year, it has advised the committee of that determination. The committee has then ratified that determination, publishing it in its annual bulletin. After such a determination for a particular variety has been published, variances during the season or permanent changes between seasons have been made by the committee or its maturity subcommittee. The committee and its staff have provided advice to the Federal-State Inspection Service in making its maturity determinations, and likewise the Federal-State Inspection Service and the committee staff have advised the committee and its maturity subcommittee in making variances and changes.

To lessen the burdens on committee members, it was proposed that the

responsibility for variances during the season and changes between the seasons be given to the Federal or Federal-State Inspection Service. This change would have simplified the procedures by assigning all maturity determinations and the application of those determinations to one group. In making this proposal, it was intended that the Federal or Federal-State Inspection Service, while considering variances and changes, would seek the advice of the committee and its staff in order to draw upon their wealth of expertise. It was also intended that any changes and any variances would be applicable to all growers and handlers of the particular variety. Finally, it was intended that any changes and variances would be made at the supervisory level of the Federal or the Federal-State Inspection Service, rather than by the particular packinghouse inspector. This was intended to ensure that these decisions are made by those who have the greatest background and expertise and who are in a position to be knowledgeable concerning current conditions throughout the entire production area.

Further, a table as proposed to be added to paragraph (a) of § 917.459 to specify color chip guides which the Federal or the Federal-State Inspection Service intends to use beginning with the 1988 season for the specified varieties of peaches.

For these varieties, an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety, and not less than 90 percent of any lot shall meet the color guide established for the variety.

The varieties listed in the table were those described above where the inspection service has sufficient experience to determine a generally appropriate test or tests and test levels. It was proposed that the Federal or Federal-State Inspection Service would have the authority to make variances from the guides in the table during the season for any variety to reflect changes in crop and weather conditions that would make the guide an inappropriate measure of "well-matured." For varieties not listed in the table, the Federal or Federal-State Inspection Service would use such tests as it deems appropriate.

There is one change in the table from the list in the 1987 Peach Bulletin. The color guide for the Prima Fire peach variety would be changed from the "I" color guide to the "H" color guide. This is intended to help make the maturity determination for this peach variety more accurate. This change is the same



as was in effect for such peach variety at the end of last season. No comments were received with respect to the proposed change. Therefore, the change is adopted as proposed.

Comments were received regarding other aspects of the proposed maturity requirements and variance procedures. One commenter opposed the proposal and in his comments, while not specific to any particular peach variety, he requested that his comments on similar proposals concerning California nectarines and plums be held applicable to California peaches. Some commenters disagreed with or suggested modifications to the proposed requirements and procedures. Some commenters requested that the current "well-matured" requirements continue in effect. One commenter thought that the maturity requirements should be returned to the level which existed in 1980 or to the mature requirements specified in U.S. No. 1 grade standards. One commenter thought that the variance procedures were lacking because an appeal process was not provided to review the setting of standards in the first place or for reviewing variance decisions. Two commenters suggested that the proposed definition of "well-matured" be clarified and made more specific as it related to the condition of fruit to make decisions on variances more objective.

In many instances, the favorable comments and other information sufficiently refuted the unfavorable comments, particularly regarding the desirability of continuing the "well-matured" requirement. Contrary to one commenter's contentions, at least one study has been conducted which indicates that the implementation of the "well-matured" requirement has resulted in greater consumer acceptance of the fruit than existed prior to 1980. Further, the shipments of "well-matured" fruit, as opposed to "mature" fruit have helped the industry's market expansion efforts. In fact, the requirement has been generally well received by the industry, retailers, and the consuming public.

In fact, one commenter submitted a *Final Report of California Summer Fruits Retailer Research* by Ervin D. Thuerk. Mr. Thuerk is a marketing consultant with the Thuerk Pro-Con Company in Westlake Village, California. Mr. Thuerk directed a project to, among other things, pursue individual retailers' attitudes and their wants and needs for fruit quality and maturity. Meetings were held with twenty-five companies in approximately twenty cities, representing nearly 17,000 retail

supermarkets, which equals a 38.7 percent share of the total industry units operated. Information was obtained on: (1) Product needs in the fresh produce industry; (2) retail marketing trends and how they are changing; (3) consumer attitudes and their changing wants and needs; (4) the development of future programs for the marketing of California summer fruits; and (5) attitudes toward industry standards and marketing programs. The findings indicate that early season fruit which is picked immature does not provide satisfaction to the consumer and does not encourage repeat purchases, and does not benefit the market. Fruit has to look good to get the consumer to buy it, but it must also taste good to foster additional sales. There is definitely a lag effect on sales from poor eating quality on the varieties which follow. When this occurs prices are depressed because the pipelines are filled with poor fruit, according to the executives interviewed.

In addition, a marketing extension pomologist from the University of California at Davis indicated that in the late 1970's the post harvest performance of a number of commercial peach cultivars had been evaluated. In these tests, researchers found that low maturity fruit tended to be more susceptible to bruising (especially vibration bruising), and also more susceptible to flesh browning following bruising. He further indicated that size is generally correlated with maturity in fruits. Typically in any population of fruits, the smallest size fruits will be lower in sugars, and often less physiologically mature, than larger fruits. He went on to say that this is especially true in a climate like California, where the bloom period is normally prolonged and thus size may indicate the length of the growing season for the individual fruits.

The Thuerk report described earlier also addresses the comments that the "well-matured" requirement does not reflect the different needs of buyers in markets far from the production area compared to buyers in nearby markets.

In addition, a comment from the Executive Vice President of the Canadian Fruit Wholesalers Association indicated that some of its members feel that the current "well-matured" standard has played an important role in keeping high quality consumer acceptable fruit grown in the United States available in Canadian markets. The members of the association polled felt that a change from the "well-matured" to the mature standard would be regressive and would hurt sales. Along the same lines, a buyer in

Chelsea, Massachusetts, indicated that it is extremely important for California packers to maintain the high quality, taste, appearance, and shelf life that their customers have come to expect. To continue its trend of buying more and more fruit, the buyer indicated that "well-matured" standard should be maintained.

In response to the commenter who asserted that the tests currently in effect are more restrictive than when the "well-matured" requirement was implemented in 1980, there has been an increase in the number of color chips used. However, the initial chips were not considered adequate to cover the variations in color among the numerous varieties. As a result, gradations in color have been added to more accurately reflect the characteristics of the many varieties of peaches. Therefore, the number of color chips *per se* does not support the contention that the color chips are more restrictive now than there were in 1980 and 1981.

One commenter stated that the price received for "well-matured" fruit has not adequately compensated for the increase in harvesting costs that have been incurred. However, the commenter did not document this claim. Further, the "well-matured" requirement has in general contributed to the economic health of the peach industry. More than 106,295,000 packages of California peaches have been inspected and shipped since the "well-matured" requirement became effective in 1980. Also, when the growers under this program participated in 1986-87 in a referendum to determine industry support for the peach marketing order program, a majority of those voting favored continuance of the program. It is doubtful that growers would favor continuing a program that resulted in considerable lost profits.

One commenter expressed the view that the maturity levels have been drastically raised to control volume as opposed to causing better consumer quality fruit to reach the market. One commenter indicated that this is evidenced by the decrease in packages shipped per acre from 1980 to 1987 even though increasing acreage was coming into production with a substantially higher number of trees planted per acre. However, this commenter's evaluation is inconclusive because he did not consider other factors in addition to the "well-matured" requirement that could affect the amount of peaches shipped to the fresh market. Other factors could lead to a reduced number of cartons shipped per acre, such as age of the trees, weather, cultural practices, and



failure to meet other types of handling requirements such as minimum size requirements.

One commenter requested an exemption for "leaf spots" and recommended a 10 percent exemption from the "well-matured" requirement be established as long as the fruit otherwise meets the U.S. No. 1 standard. These recommendations are being referred to the committee for evaluation.

In view of the foregoing, this action adopts, the proposed maturity requirements described above to recognize the interest in California peach growers and handlers in maintaining the quality and maturity of the peaches they market. As stated previously, in 1979, the committee reported that peaches picked and packed at the minimum standard of maturity "mature," were rather severely criticized at destination. The evidence indicates that the "well-matured" requirement in effect since that time has resulted in more consumer acceptance and the expansion of markets for California peaches.

We do, however, believe that a more specific definition of "well-matured" could be helpful. Therefore, comments are invited on developing a definition with more specificity.

In addition to the comments received on the size and maturity requirements, the Department received comments on the variance procedures described in the proposed rule. The proposal stated that: "The Federal or the Federal-State Inspection Service has the authority to make variances for any variety from any guide or tests, including those in Table I, during the season to reflect changes in crop or weather conditions that would make the existent guide an inappropriate measure of 'well-matured.'"

The purpose of this change was to relieve the maturity subcommittee of the burden of making variances during the season because committee members are dispersed over a wide geographic area and have daily responsibilities with regard to their own businesses.

However, comments from the committee and officials from the Federal-State Inspection Service indicated that the committee and its maturity subcommittee should continue to play a direct role in making final determinations on making changes and granting variances in the maturity guides used in determining whether the fruit meets the "well-matured" standard. The commenters indicated that these very important decisions should not rest solely in the hands of one group, but they should be fair and timely because of the perishability of the commodity.

Comments received from the California Department of Food and Agriculture (CDFA) indicated that full responsibility to allow or disallow variances from color chip requirements should not be placed on the inspection service. The comment indicated that the CDFA and Federal-State Inspection Service has provided and will continue to provide expert advice on the condition or maturity of the fruit.

The committee suggested that the first contact should be with the Federal-State Inspection supervisor so the supervisor would first be able to review the problem to determine if the problem is with maturity or with interpretation of an individual inspector. The committee pointed out that in the past, the supervising inspector has been able to resolve many issues by working with the grower or shipper and the packing house inspector. If the situation could not be resolved to the satisfaction of the inspection service and the requester, then the requester would ask for a maturity variance.

In view of this, the Department has decided to specify in the regulations procedures for handling variances during the current and subsequent season which are similar to those currently used. In addition, in order to respond to comments that there is no recourse to adverse decisions of the maturity subcommittee, this interim final rule establishes a procedure for appealing those decisions. These procedures are specified in paragraph (a)(1) of § 917.459.

Under these procedures, a grower or handler may make a request for a variance from the maturity guide by calling an authorized committee fieldman to arrange for an on-site examination of the fruit. This fieldman would call the officer-in-charge of the local Federal-State Inspection Service office to accompany the fieldman to the site. If either the fieldman or the inspection representative or both agree that a variance is warranted, the request for the variance and the written views of the fieldman and inspection official shall be forwarded to the maturity subcommittee for review and written determination. The fieldman shall notify the requester when the request has been forwarded to the maturity subcommittee and whether the request will be considered at a public or a telephone meeting. The requester may attend public meetings or participate in telephone meetings and may provide additional information in support of the request to the chairman of the maturity subcommittee prior to a public or telephone meeting. In reaching its determination, the subcommittee shall

take into account written comments, observations, and recommendations of the fieldman and inspection official, and any other information provided by the requester. Decisions of the maturity subcommittee shall be made within two days from the time the request for variance is received.

Because of the perishability of the fruit, it is imperative that decisions on variances be made promptly. Because of the large geographical area involved and the need for timely decisions, the subcommittee may hold telephone meetings. A majority of the subcommittee must vote in favor of variance. The subcommittee shall prepare a written report of its determination and the reasons therefor. The fieldman shall, in a timely manner, inform the requester of the subcommittee's decision, the basis therefor, and the procedure for appealing the decision. A copy of the written report shall be provided to the requester and to the Department's California Marketing Field Office in Fresno. If the requester is dissatisfied with the maturity subcommittee's determination, the requester may file an appeal as described later.

If after on-site review of the request neither the fieldman nor the inspection official believe a variance is warranted, the variance will not be granted and the matter will not be referred to the maturity subcommittee. The requester however may file an appeal from this determination in accordance with the procedure described below.

To file an appeal, the requester shall notify the Peach Commodity Committee manager who will immediately refer the appeal to the Appeal Committee established by this rule. It is important that the members of the Appeal Committee are different from those serving on the maturity subcommittee which makes the initial determination. It is also important that members of the Appeal Committee are knowledgeable about crop and maturity conditions in the industry. Therefore, the Appeal Committee shall consist of the Chairman of the Plum Commodity Committee, the Chairman of the Nectarine Administrative Committee, and the appropriate Federal-State shipping point inspection program supervisor, or their designees. The Appeal Committee shall review all documentation and any further information provided by the requester. Decisions of the Appeal Committee must be made within one day from the time the Peach Commodity Committee manager is notified of the appeal, recognizing that a final decision must be made promptly. A majority vote



of the Appeal Committee is needed to grant a variance. The Appeal Committee may hold telephone meetings in order to facilitate the decisionmaking process. The Appeal Committee shall prepare a written report of its determination and the reasons therefor.

A representative of the Appeal Committee shall, in a timely manner, inform the requester of the Appeal Committee's decision and the reasons therefor. A copy of the written report shall be provided to the requester, to the committee manager, and to the California Marketing Field Office.

Another change from the proposal is that any decision to grant a variance for a particular peach variety will not automatically apply to all growers and handlers of that variety throughout California. The committee and other commenters have pointed out that the granting of variances on an across-the-board basis throughout the state may not be appropriate. Because of the differences in weather and growing conditions that occur throughout the growing area a variety grown in the San Joaquin Valley may be "well-mature" at a lesser degree of color than an orchard of the same variety in the upper San Joaquin Valley. This condition is sometimes significant and can even occur in neighboring orchards.

The inspection and industry officials designated to make these variance decisions have the necessary background and expertise in fruit maturity and knowledge about growing conditions in the production area.

It is the Department's view that the change to delete two varieties no longer produced in commercially significant quantities from variety-specific size requirements and to change size requirements for peaches shipped in No. 12B standard fruit (peach) boxes during the period November 1 through July 2 will not be detrimental to small entities. The change to clarify and revise the maturity requirements for peaches is intended to foster and facilitate a greater understanding of these requirements within the peach industry and, as such, would not result in additional costs. The change to the "well-matured" guide for the Prima Fire variety of peaches will make maturity determination more accurate.

Based on the above, the Administrator of AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the committee's recommendations, the comments received in favor and

opposition, and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary, and contrary to the public interest to give notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because: (1) Shipments of 1988 crop peaches have begun and this action should cover as much of the 1988 crop as possible; and (2) the maturity requirements set forth below are substantially the same as currently implemented; and (3) this interim final rule relaxes size requirements for two varieties of peaches.

The actions set forth below are being issued on an interim final basis with opportunity for written comments rather than as a final rule so interested persons will be able to provide input on the maturity modifications and still allow the maturity procedures to be used for as much of the 1988 shipping season as possible. An opportunity needs to be provided for interested persons to file comments, but, as mentioned earlier, it is imperative that the size, maturity requirements and variance procedures apply to as much of the 1988 crop as possible.

The committee's recommendation, other information, and all written comments timely received in response to this interim final with request for comments will be considered prior to any finalization of this interim final rule. Commenters are encouraged to submit their views in support of or in opposition to this interim final rule. Any pertinent data to support views and comments should also be submitted.

#### List of Subjects in 7 CFR Part 917

Marketing agreements and orders, Pears, Plums, Peaches, California.

For the reasons set forth in the preamble, 7 CFR Part 917 is amended as follows:

#### PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 917.459 is revised to read as follows:

#### § 917.459 Peach Regulation 14.

(a) No handler shall ship:

(1) Any lot or package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade, except that the peaches shall be "well-matured," rather than "mature," but not overripe or shriveled.

(i) During the 1988 and subsequent seasons, the Federal or the Federal-State Inspection Service will use the maturity guides listed in Table I in making maturity determinations for the specified varieties. For these varieties, not less than 90 percent of any lot shall meet the color guide established for the variety, and an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety. For varieties not listed, the Federal or the Federal-State Inspection Service will use such tests as it deems proper. A variance for any variety from the application of the maturity guides specified in Table I may be granted during the season to reflect changes in crop, weather, or other conditions that would make the specified guides an inappropriate measure of "well-matured." The maturity determination variance procedure is set forth as follows:

(ii) A grower or handler may initiate a request for variance from a maturity guide (e.g., color chip) by calling an authorized committee fieldman to arrange for an on-site examination of the fruit. This fieldman will call the officer-in-charge of the local Federal-State Inspection Service office to accompany the fieldman to the site.

(iii) The committee fieldman and the officer-in-charge accompany the requester to the site.

(iv) If either the fieldman or the inspection representative or both agree that a variance is warranted, the request for the variance and the written views of the fieldman and inspection official shall be forwarded to the maturity subcommittee for review and written determination. The fieldman shall notify the requester when the request has been forwarded to the maturity subcommittee and whether the request will be considered at a public or a telephone meeting. The requester may attend public meetings or participate in telephone meetings and may provide additional information in support of the request to the chairman of the maturity subcommittee prior to a public or telephone meeting. In reaching its determination, the subcommittee shall take into account written comments, observations and recommendations of the fieldman and inspection official, and any other information provided by the requester. Decisions of the maturity subcommittee shall be made within two



days from the time the request for variance is received. A majority of the subcommittee must vote in favor of the variance for it to be implemented. The subcommittee shall prepare a written report of its determination and the reasons therefor. The fieldman shall, in a timely manner, inform the requester of the subcommittee's decision, the basis therefor, and the procedure for appealing the decision. A copy of the written report shall be provided to the requester and the Department's California Marketing Field Office in Fresno. If the requester is dissatisfied with the maturity subcommittee's determination, the requester may file an appeal in accordance with paragraph (a)(1)(vi) of this section.

(v) If neither the fieldman nor the inspection official believe a variance is warranted, the variance shall not be granted. The requester may file an appeal from this determination as specified in paragraph (a)(1)(vi) of this section.

(vi) To file an appeal, the requester shall notify the Peach Commodity Committee manager who will immediately refer the appeal to the Appeal Committee. The Appeal Committee shall consist of the Chairman of the Plum Commodity Committee, the Chairman of the Nectarine Administrative Committee, and the appropriate Federal-State shipping point inspection program supervisor, or their designees. The Appeal Committee shall review all documentation and any further information provided by the requester. Decisions of the Appeal Committee must be made within one day from the time the Peach Commodity Committee manager is notified of the appeal. A majority vote of the Appeal Committee is needed to grant a variance. The Appeal Committee may hold telephone meetings. The Appeal Committee shall prepare a written report of its determination and the reasons therefor. A representative of the Appeal Committee shall, in a timely manner, inform the requester of the Appeal Committee's decision and the reasons therefor. A copy of the written report shall be provided to the requester, to the committee manager, and to the California Marketing Field Office.

(2) Any package or container of Desertgold variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 96 peaches in the box; or

(ii) Such peaches in any container when packed other than as specified in paragraph (a)(2)(i) of this section are of

a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 96 peaches.

(3) Any package or container of any type of Morning Sun or Springgold variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 84 peaches in the box; or

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 65 peaches in the box; or

(iii) Such peaches in any container when packed other than as specified in paragraph (a)(3) (i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 79 peaches.

(4) Any package or container of Babcock, Coronet, Early Coronet, Firecrest, First Lady, Flavorcrest, Flavor Red, Golden Crest, Golden Lady, Honey Red, June Crest, June Lady, Kern Sun, May Crest, May Lady, Merrill Gem, Merrill Gemfree, Ray Crest, Redhaven, Redtop, Regina, Royal May, Springcrest, Spring Lady, Willie Red, or 50-178 variety of peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 80 peaches in the box; or

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 65 peaches in the box; or

(iii) Such peaches in any container when packed other than as specified in paragraph (a)(4) (i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 73 peaches.

(5) Any package or container of Angelus, August Sun, Autumn Crest, Autumn Gem, Autumn Lady, Belmont, Berenda Sun, Blum's Beauty, Cassie, Cal Red, Carnival, Early O'Henry, Elberta, Elegant Lady, Fairmont, Fairtime, Fay Elberta, Fayette, Fire Red, Flamecrest, Fortyniner, Franciscan, July Lady, July Sun, Kings Lady, Lacey, Mary Ann, O'Henry, Pacifica, Parade, Preuss, Suncrest, Red Cal, Redglobe, Red Lady, Ryan's Sun, Scarlet Lady, Sparkle, Sprague Last Chance, Suncrest, Sun Lady, or Toreador variety of peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 72 peaches in the box; or

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 65 peaches in the box; or

(iii) Such peaches in any container when packed other than as specified in paragraphs (a)(5) (i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 64 peaches.

TABLE I

Column A variety	Column B maturity guide
Angelus.....	I
Armgold.....	D
August Sun.....	I
Autumn Crest.....	I
Autumn Gem.....	I
Autumn Lady.....	H
Babcock Type (Ask Supervising Insp.).....	
Bella Rosa.....	G
Belmont (Fairmont).....	I
Berenda Sun.....	I
Blum's Beauty.....	G
Bonjour.....	F
Cardinal.....	G
Cal Red.....	I
Carnival.....	I
Cassie.....	H
Coronet.....	E
Delp.....	C
Desertgold.....	B
Early Coronet.....	D
Early Elberta.....	C
Early Fairtime.....	I
Early O'Henry.....	I
Early Royal May.....	G
Early Top.....	B
Elberta.....	B
Elegant Lady.....	M
Fairtime.....	G
Fay Elberta.....	C
Fayette.....	I
Fiesta.....	I
Fire Red.....	I
First Lady.....	D
Firecrest.....	I
Flamecrest.....	I
Flavorcrest.....	G
Flavor Red.....	G
Fortyniner.....	F
Franciscan.....	G
Golden Lady.....	F
Halloween.....	I
Honey Red.....	G
JJK-1.....	G
Jody Gaye.....	F
Judy Elberta.....	C
July Lady.....	G
June Crest.....	G
June Lady.....	G
Kearney.....	I
Kern Sun.....	H
Kim Elberta.....	C
King's Lady.....	I
Lacey.....	I
Mardigras.....	G



TABLE I—Continued

Column A variety	Column B maturity guide
May Crest	G
May Lady	G
Merrill Gem	G
Merrill Gemfree	G
Morning Sun	D
O'Henry	I
Pacifica	G
Parade	I
Pat's Pride	D
Preuss Suncrest	F
Prima Fire	H
Ray Crest	G
Red Cal	I
Redglobe	C
Redhaven	G
Red Lady	G
Redtop	G
Regina	G
Rio Oso Gem	I
Royal April	D
Royal Gold	D
Royal May	G
Ryan's Sun	I
Scarlet Lady	F
Sparkle	I
Springcrest	G
Spring Lady	H
Springgold	D
Summerset	I
Suncrest	G
Sun Lady	I
Toreador	I
Treasure	F
Willie Red	G
Windsor	I

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guide applicable to the varieties not listed above.

(b) During the period November 1 through July 2 of each fiscal period, no handler shall handle any package or container of any variety of peaches not specifically named in paragraphs (a) (2), (3), (4), or (5) of this section unless:

(1) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with requirements of standard pack, not more than 96 peaches in the box; or

(2) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, no more than 65 peaches in the box; or

(3) Such peaches in any container when packed other than as specified in paragraphs (b) (1) or (2) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 96 peaches.

(c) During July 3 through October 31 of each fiscal period, no handler shall handle any package or container of any variety of peaches not specifically named in paragraphs (a) (2), (3), (4), or (5) of this section unless:

(1) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with requirements of standard pack, not more than 80 peaches in the box; or

(2) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 65 peaches in the box; or

(3) Such peaches in any container when packed other than as specified in paragraphs (c) (1) or (2) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 73 peaches.

(d) As used herein, "U.S. No. 1," "mature," and "standard pack" mean the same as defined in the United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223); and "No. 22D standard lug box" and "No. 12B standard fruit (peach) box" mean the same as defined in section 1380.19(18) of the "Regulations of the California Department of Food and Agriculture." "Well-matured" means a condition distinctly more advanced than "mature."

Dated: May 24, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-12037 Filed 5-26-88; 8:45 am]

BILLING CODE 3410-02-M

## NUCLEAR REGULATORY COMMISSION

10 CFR Parts, 4, 11, 25, 30, 31, 32, 34, 35, 40, 50, 60, 61, 70, 71, 73, 74, 75, 95, and 110

### Retention Periods for Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to establish a definite retention period for each record that an NRC application or licensee for a materials or facility license is required to maintain. This action is necessary to comply with the Office of Management and Budget requirement that a specific retention period be identified for each record. The final rule also establishes a uniform standard acceptable to the NRC for the condition of a record throughout each specified retention period. This action is expected to reduce the overall recordkeeping burden for NRC applicants and licensees by use of

uniform and specific retention periods for each recordkeeping requirement.

**EFFECTIVE DATE:** July 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Brenda J. Shelton, Acting Chief, Records and Reports Management Branch, Division of Information Support Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-8132.

### SUPPLEMENTARY INFORMATION:

#### Background

The Nuclear Regulatory Commission's (NRC) regulations require that applicants and licensees retain a variety of records for various periods of time. Licensees must also retain certain plans and procedures for routine operation and emergency situations and file reports of certain occurrences and events. The NRC reviewed its recordkeeping requirements to determine how long the required records should be retained. This rule reflects the results of that review and of the public comments received on the proposed rule. The NRC did not include 10 CFR Part 20 in its review. The record retention requirements contained in Part 20 were examined and modified as part of the proposed revision to Part 20 that was published for public comment in the *Federal Register* on December 20, 1985, (50 FR 51992) and republished on January 9, 1986 (51 FR 1092). Codification of these amendments and amendments in certain published proposed rules combined with this final rule will establish uniform retention periods for all NRC recordkeeping requirements. NRC also intends to conform record retention requirements in future rules to the four uniform periods contained in this rule.

Previously, NRC regulations sometimes specified that a record be retained for a specific period of time. These periods varied widely from 1 or 2 years, to the 40-year life of a reactor license, or to the completion of decommissioning for some licenses. In other instances, the regulation specified that a record be kept until the Commission authorized its disposition, and in others, that it be retained indefinitely. Some parts of NRC regulations specified the condition of a record acceptable to the NRC throughout its required retention period; others did not.

This rule amends regulations in 19 parts of Title 10 to require that certain records in these parts be retained for specific periods. The rule also provides for all parts to Title 10, Chapter I, the



condition of a record acceptable to the NRC throughout its retention.

This rule also establishes four specific retention periods to be used throughout 10 CFR Chapter I. With the exception of one 6 month retention period at 10 CFR 70.58(h), uniform retention periods of 3 years, 5 years, 10 years, or the life of the component, activity, area, or facility are being codified to simplify the system for retaining NRC records. These particular four periods, although not ideal for every record retention requirement, seem to be the best choices for NRC record needs. Uniform periods were recommended to the NRC by the Nuclear Information and Record Management Association (NIRMA) based on the nuclear industry's input to NIRMA. Three of the uniform periods coincide with the retention periods for quality assurance (QA) records in Parts 50 and 71; the fourth coincides with the retention periods for records such as those covered by technical specifications.

The NRC recognizes that technical specifications for each nuclear power plant include record retention requirements that may, in some cases, differ from those set out in this rule. The requirements in this rule take precedence over and supersede any conflicting requirements presently in the technical specifications. Therefore, the Office of Nuclear Reactor Regulation (NRR) intends to issue a generic letter that would provide guidance to licensees for revising their technical specifications to conform with this rule and would include model technical specifications to follow for achieving this conformance.

During the course of reviewing 10 CFR 50.36, "Technical Specifications," the staff found that this section does not clearly reflect the difference in recordkeeping and reporting requirements for reactors licensed under different sections of the regulations. Specifically, commercial and industrial facilities are licensed under § 50.21(b) or § 50.22 and have detailed notification and reporting requirements delineated in § 50.72 and § 50.73, respectively. Therefore, specific cross references to § 50.72 and § 50.73 have been added to § 50.36 where appropriate. Facilities licensed under § 50.21(a) for medical therapy uses and facilities licensed under § 50.21(c) for research and development activities do not have separate sections dealing with notification and reporting. The reporting requirements on the automatic safety system and for these types of reactors are contained within § 50.36. Accordingly, language is being added to

§ 50.36(c)(1)(ii)(A) to make it conform with § 50.72(b)(2)(iii) and § 50.73(a)(2)(v).

An effort has been made to use consistent terminology with regard to paperwork throughout this multi-part rule. For example, the term "retain" conveys the idea of keeping secure or intact and the term "maintain" continuing to preserve and update, in this case, a record. Consistent terminology and specific recordkeeping requirements and retention periods should assist an NRC applicant or a licensee in complying with these requirements.

The changes resulting from this rule should result in an overall reduction in the recordkeeping burden imposed on the NRC applicant or licensee. The major reduction in burden results from establishing 126 specific retention periods, primarily three years or the life of a license, for records that up to now were retained indefinitely. This major reduction, plus four other reductions of retention periods by two years, offsets the increase in retention periods for 54 records; 42 cases by one year, 10 cases by two years, 1 case by two and one half years, and 1 case by three years. Based on staff's understanding of current industry practices, the increases in retention periods would either not impose any additional burden or could be readily accommodated within current equipment configurations and, therefore, would represent no appreciable increase in burden. A paragraph describing the form and condition of a record acceptable to the NRC for review is being codified in ten parts. This requirement is comparable to similar provisions currently included in other parts of the NRC regulations.

Specifying clearly in NRC regulations what records to retain, how long to retain them, and the condition of a record required for NRC inspection is mutually beneficial to the applicant or licensee and to the NRC. The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) added impetus to the NRC's interest in the regulatory burden imposed on an applicant or a licensee by the preparation and retention of records. Furthermore, OMB's regulations implementing the Paperwork Reduction Act require that record retention requirements imposed by Federal regulations contain specific retention periods. The NRC complies with the Act's requirement for Office of Management and Budget (OMB) review of the information collection requirements in each rulemaking. In addition, two documents on paperwork are being prepared for publication in the NUREG-series: One document will be

based on Regulatory Guide 10.1, which is a compilation of reporting requirements for persons subject to NRC regulations, and the other document will summarize the record retention periods for the recordkeeping requirements contained in NRC regulations. These companion documents should be useful to an NRC applicant or a licensee.

On October 28, 1987, the NRC published the proposed rule in the *Federal Register* (52 FR 41442). The comment period ended on December 28, 1987.

#### Summary of Public Comments

Comments were received from sixteen respondents comprised of eight power reactor licensees, three industry groups, two law firms, one university, one fuel fabrication plant operator, and one private citizen. Copies of the comment letters are available for public inspection and copying for a fee at the NRC Public Document Room at 1717 H Street, NW., Washington, DC. Fifteen of the sixteen commenters generally agreed with the proposed amendments and one commenter disagreed.

Individual who disagreed did not identify any specific records but stated that "reduction of many record retentions to three years would invite cheating, criminal activity, and the ignoring of rules set up to protect the public." The Commission does not agree with this comment. The Commission has an extensive compliance monitoring and inspection program. While examination of licensee record is an important part of the program, it is not the only means by which NRC determines whether licensees are operating safely. Moreover for those requirements covered by the three year minimum period, the Commission believes that records covering the previous three year period will be sufficient to assist the agency in judging compliance or noncompliance, to act on possible noncompliance, and to examine facts as necessary following any incident. In the situation alluded to by the commenter, large irradiators and large medical licensees possessing significant quantities of radioactive material are inspected annually, hence the three year minimum period is adequate.

The remaining fifteen commenters agreed with the proposed changes with the following general comments:

1. *Comment.* Three commenters recommended that the Commission specify in the "statement of Considerations" that a Technical Specification amendment made to conform to this rule is not required and that "pen and ink" changes are



acceptable. Two commenters suggested that fees should not be required for these changes.

**Response.** The Commission agrees that a Technical Specification amendment to conform to the administrative requirements of this rule is not required and that "pen and ink" changes will suffice. However, should licensees desire to amend their Technical Specifications to conform to the administrative requirement of this rule, the licensees would not be required to submit fees under 10 CFR Part 170.

**2. Comment.** One commenter suggested that the general statement appearing in the Supplementary Information which states that requirements in this rule take precedence over and supersede any conflicting requirements in the Technical Specifications should be addressed in 10 CFR 50.38 and, as appropriate, referenced in other 10 CFR Parts.

**Response.** The Commission believes that the information provided in the "Supplementary Information" is adequate. 10 CFR 50.71(d)(2) currently addresses the precedence issue for 10 CFR Part 50 licensees and applicants. Reference to § 50.71(d)(2) in other 10 CFR Parts is not necessary.

**3. Comment.** Three commenters recommended that the maintenance of records in electronic media such as computerized records and optical disks be addressed.

**Response.** The Commission does not object to the use of electronic media for the storage of records as long as legible, accurate, and complete records can be produced in hardcopy throughout the duration of the required retention period. Records such as letters, drawings, specifications, etc. must include all pertinent features such as stamps, initials, and signatures. Adequate safeguards against tampering with and loss of records must also be maintained. The rule has been changed to address the use of electronic media.

**4. Comment.** One commenter recommended that the records to be retained under 10 CFR Part 20 be addressed in this rule.

**Response.** The Commission believes that the pending amendment to 10 CFR Part 20 is the most efficient and economical means for addressing the records contained in that part. The amendment to 10 CFR Part 20 will meet all of the record retention requirements established by this rule. This approach will ensure that the recordkeeping requirements are consistent with changes to the technical and administrative aspects to Part 20 that may result from the public comments

and additional staff review of the requirements included in that part.

**5. Comment.** One commenter recommended that the increased record retention periods remain as they are currently specified in 10 CFR Chapter I and another specifically questioned the increased retention period for 53 records.

**Response.** The Commission has modified many retention periods to streamline and standardize its record retention requirements and to reduce the burden imposed by those requirements. There are instances in which an individual record retention period has been increased. However, we believe that, in general, the rule will result in an ultimate benefit to the majority of the applicants and licensees as well as to the NRC.

**6. Comment.** One commenter stated that the proposed rule changes the current requirements of § 74.31 from a performance-oriented rule to one containing specific recordkeeping requirements. The commenter believes that the proposed changes complicate the licensee's ability to devise its own recordkeeping system, compatible with its own operations, in accordance with a performance oriented rule, and that the proposed changes are unnecessary and should be eliminated.

**Response.** The Commission has reevaluated the proposed changes in light of this comment and has determined that the specific enumeration of records is not necessary. The current performance-oriented rule adequately provides for retention of records to demonstrate compliance with the Commission's requirements. The proposed change to § 74.31 has been deleted from the final rule.

**7. Comment.** Two commenters stated that the records retention period for the Safety Analysis Report is not obvious and needs to be addressed.

**Response.** Section 50.71(e) requires licensees to periodically update their FSAR's. Implicit in this requirement is the retention of the updated FSAR by licensees for the duration of their licenses. The Commission believes that the retention period of an updated FSAR is inherent in its existing regulations. Nevertheless, 10 CFR 50.71(e)(6) has been added to the rule to specify that the updated Final Safety Analysis Report (FSAR) is to be retained by the licensees until the NRC terminates their licenses.

**8. Comment.** One Commenter stated that the rule does not make it clear that the retention periods specified are minimum requirements.

**Response.** The commission does not object to licensees/applicants retaining

records beyond the retention period required by NRC regulations. The intent of retention periods for recordkeeping requirements is to establish the minimum retention necessary for compliance with NRC regulations. Should licensees or applicants elect to retain records beyond the retention period required by the NRC, they have that option. Licensees should be aware, however, that NRC's recordkeeping requirements apply only to NRC requirements for the information. Other Federal, State, or local agencies may have requirements that may apply now or in the future.

**9. Comment.** One commenter stated that the recordkeeping requirement pursuant to § 50.54(p)(2) has not been addressed and suggested that the retention be changed to three years.

**Response.** The omission of the recordkeeping requirement contained at § 50.54(p)(2) was an oversight and has been included in the final rule with a three year retention period.

**10. Comment.** One commenter suggested that the minimum retention period be changed to "three years or until the next inspection, whichever is longer," stating that three years is an insufficient retention period because some records would be destroyed before the next inspection.

**Response.** While some inspection frequencies are longer than three years, the Commission believes that records covering the previous three year period are sufficient to permit the NRC to judge compliance or noncompliance, to act on possible noncompliance, and to examine necessary facts following an incident. Licensees possessing materials which could pose a significant risk to public health and safety, such as irradiators or large medical facilities, are inspected annually. The three year period, while not ideal for all situations, is a reasonable period which generally satisfies NRC's record needs and conforms to OMB guidelines by providing for the availability of records while not imposing any undue burden on the licensees.

**11. Comment.** One commenter stated that increases in retention periods from two to three years are unnecessary. The commenter believes that present inspection cycles make two years an adequate retention period and suggested that the current two year retention periods for records contained in §§ 70.22(k), 71.9(a), and 110.53(b) be retained.

**Response.** As explained in the proposed rule, the three year period was selected as one of four periods to provide a uniform system for retention



of all NRC required records. While it is not ideal for all situations, it is a reasonable period which generally satisfies NRC's record needs and conforms to OMB guidelines while not imposing any undue burden on licensees. The Commission believes that any added burden on licensees by an increase, such as from two to three years, is slight and is balanced by the benefit of a uniform system for overall records retention.

**12. Comment.** One commenter stated that the requirements in § 71.135(a) to keep QA records for three years beyond the date the licensee last engages in the activity for which the QA procedures were developed and to keep superseded portions of written procedures for three years are unnecessary and should be deleted. The commenter believes that it is sufficient to retain the QA records only for the life of the package to which they apply.

**Response.** The Commission disagrees with this comment. Quality assurance records, such as design, fabrication, or predetermination tests, must be retained beyond the end of the service life of the package so that they will be available for examination by the Commission in any analysis following an accident, incident, or other problem involving public health and safety.

**13. Comment.** One commenter stated that the requirement in § 70.24(a)(3) to retain the superseded portion of emergency procedures is unnecessary and should be deleted.

**Response.** The Commission disagrees with the comment. It is essential that, following any incident in which the use of emergency procedures may be involved, NRC be able to examine all of the facts that existed at the time of the incident, including the emergency procedures that were in effect at that time. Because it is possible, if not probable, that emergency procedures may be revised following an emergency incident based on the licensee's experience in using the procedures, it is necessary that superseded portions be retained for the minimum period, three years.

**14. Comment.** One commenter stated that the requirement in § 70.42(d) to keep copies of licenses, certificates, and other documents used to verify that a recipient of licensed material is authorized to receive it is not necessary and should be deleted.

**Response.** The Commission disagrees with the comment and believes that NRC needs to be able to examine these records to ensure that licensees are complying with the requirement that they verify the authorization of the

persons receiving licensed radioactive material.

**15. Comment.** One commenter stated that the backfit rule, § 50.109, should apply because the recordkeeping rule adds new record retention requirements to various sections of 10 CFR Part 50.

**Response.** The Commission disagrees with the comment. Section 50.36 is the only section within Part 50 that has been revised to clarify recordkeeping requirements. However, all records specified in this section are currently required by other provisions contained in 10 CFR Chapter I. As stated on page 41443 of the "Federal Register Notice" for the proposed rule published October 28, 1987, the backfit rule, 10 CFR 50.109, does not apply to the records retention rule.

**16. Comment.** One commenter stated that the specific uniform record retention periods being proposed do not conform to the retention periods for the Nuclear Liability Insurance Records identified in ANI/MAELU Information Bulletin 80-1A which requires the records to be maintained for the life of the nuclear liability insurance policy plus ten years.

**Response.** The record retention requirements set forth in the 10 CFR Chapter I establish the minimum retention periods necessary for NRC to ensure compliance with the safety and health aspects of the nuclear environment and for the NRC to accomplish its mission to protect the public health and safety. Retention of records beyond the minimum period is at the option of the licensee. Licensees should be aware, however, that NRC's recordkeeping requirements apply only to NRC requirements for the information. Other Federal, State, or local agencies may have requirements that may apply now or in the future.

**17. Comment.** One commenter stated that the lack of clear definitions for terms such as "legible" and "authenticated" has the potential to create substantial confusion as to what records are acceptable.

**Response.** The following definitions of "legible" and "authenticated" apply to records retained under the NRC's regulatory authority. The term "legible" denotes that the records can be read and deciphered within a reasonable amount of time. "Authenticated" denotes that the data has been verified for completeness and accuracy by an authorized individual and that it is a true representation of the original data. This also addresses one commenter's concern about what constitutes a record capable of producing a clear copy.

**18. Comment.** One commenter stated that the requirement in 10 CFR Part 73,

Appendix B, Criteria I.C., that a physical test be performed within thirty days of a physical examination was deleted in August 1987 and should not be reintroduced.

**Response.** The requirement to conduct a medical examination within the preceding 30 days of the physical fitness qualification was revised after publication of the proposed rule. On January 7, 1988 (53 FR 403) Criteria I.C. was revised to state that subsequent to the medical examination, physical fitness shall be demonstrated. This revision is reflected in the final rule.

**19. Comment.** One commenter stated that the requirement in § 73.70(d) to list the "reason for entry," into a vital area was deleted and should not be reintroduced.

**Response.** The Commission agrees with the comment. The requirement has been deleted from the final rule.

**20. Comment.** One commenter noted that § 50.49(d) contains revised wording that apparently makes this section redundant with existing § 50.49(j).

**Response.** The Commission disagrees that the recordkeeping requirement contained in § 50.49(d) is redundant to that contained in § 50.49(j). Section 50.49(d) requires the retention of the list of electrical equipment important to safety and information specified in paragraphs (d)(1), (2), and (3) only. Section 50.49(j) requires the retention of records to support the qualification of equipment, but reiterates that there are qualification records contained in § 50.49(d) that must be retained for the same period.

**21. Comment.** One commenter recommended that the Commission update Regulatory Guide 10.1 to clarify and simplify recordkeeping requirements. The commenter also recommended that all recordkeeping requirements be consolidated into a single location within the regulations.

**Response.** Regulatory Guide 10.1 is a partial listing of regulatory reporting requirements. As indicated in the Supplementary Information, NRC will publish a separate compilation of NRC regulatory reporting and recordkeeping requirements in the NUREG series. The Commission believes the publication of these compilations will preclude the need to group all recordkeeping requirements in a single location within the regulations.

**22. Comment.** One commenter questioned why the retention period for safeguards contingency plans varies depending upon whether the special nuclear material is in transit or at a fixed location and cited § 73.26(e)(3) and



§ 73.40(b) as examples of this discrepancy.

**Response.** The record retention periods for §§ 73.26(e)(3) and 73.40(b) differ because the individual requirements are different. Section 73.26 covers licenses to transport special nuclear material (SNM) where possession of the material occurs at discrete times and terminates when the last shipment is completed through acknowledged receipt by the receiver. On the other hand, § 73.40(b) covers licenses to hold SNM at fixed sites where possession of material is more continuous and it is more difficult to confirm that possession has ended and the license can be terminated.

#### Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in categorical exclusions 10 CFR 51.22(c)(1) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

#### Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This final rule has been submitted to the Office of Management and Budget for review and approval. Requirements in nineteen parts included in this rule were assigned approval numbers by the Office of Management and Budget as follows:

Part 4—3150-0053; Part 11—3150-0062; Part 25—3150-0048; Part 30—3150-0017; Part 31—3150-0016; Part 32—3150-0001; Part 34—3150-0007; Part 35—3150-0010; Part 40—3150-0020; Part 50—3150-0011; Part 60—3150-0127; Part 61—3150-0135; Part 70—3150-0009; Part 71—3150-0008; Part 73—3150-0002; Part 74—3150-0123; Part 75—3150-0055; Part 95—3150-0047; Part 110—3150-0036.

#### Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), and NRC Size Standards (50 FR 50241; December 9, 1985), the Commission hereby certifies that this rule does not have a significant economic impact upon a substantial number of small entities. The rule amends parts of the NRC regulations by specifying a period to retain each required record. The rule affects most facility and materials licensees by reducing the regulatory burden of retaining records for an unnecessarily long or indefinite period. Therefore, it is not expected to have a significant economic impact on any licensee. Comments on the expected

economic impact of this rule on small entities were solicited; however, none were received.

#### Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to the rule. The rule is purely administrative in nature, and therefore does not result in the "modification of or addition to systems, structures, components, or design of a facility \* \* \* or the procedures or organization required to design, construct, or operate a facility \* \* \*". See 10 CFR 50.109(a)(1).

**List of Subjects in 10 CFR Parts 4, 11, 25, 30, 31, 32, 34, 35, 40, 50, 60, 61, 70, 71, 73, 74, 75, 95, and 110**

Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 4, 11, 25, 30, 31, 32, 34, 35, 40, 50, 60, 61, 70, 71, 73, 74, 75, 95, and 110.

#### PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED COMMISSION PROGRAMS

1. The authority citation for Part 4 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. A new § 4.6 is added to read as follows:

##### § 4.6 Maintenance of records.

Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

3. Section 4.32 is revised to read as follows:

#### § 4.32 Compliance reports.

(a) Each recipient shall keep records and submit to the responsible NRC official, timely, complete, and accurate compliance reports at the times and in the form and containing the information that the responsible NRC official may determine to be necessary to enable the official to ascertain whether the recipient has complied or is complying with this subpart.

(b) In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, the other recipient shall also submit necessary compliance reports to the primary recipient to enable the primary recipient to carry out its obligations under this subpart.

(c) The primary recipient shall retain each record of information needed to complete a compliance report pursuant to paragraph (a) of this section for three years or as long as the primary recipient retains the status of primary recipient as defined in § 4.4, whichever is shorter.

4. In § 4.125, the introductory text of paragraph (d) is revised to read as follows:

#### § 4.125 Preemployment inquiries.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant must be collected on separate forms. The recipient shall retain each form as a record for three years from the date the applicant's employment ends, or, if not hired, from the date of application. Each form must be accorded confidentiality as a medical record, except that:

5. In § 4.127, the introductory text of paragraph (d) is revised to read as follows:

#### § 4.127 Existing facilities.

(d) **Transition plan.** In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop a transition plan setting forth the steps necessary to complete the changes. The plan is to be developed with the assistance of interested persons, including handicapped persons, or organizations representing handicapped persons, and the plan is to meet with the approval of the NRC. The recipient shall retain a copy of the transition plan as a record until any structural change to a facility is complete. A copy of the transition plan



is to be made available for public inspection. At a minimum, the plan is to:

# **PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL**

6. The authority citation for Part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

## **§ 11.9 [Amended]**

7. Section 11.9 is amended by changing "two years" to "three years" in the last sentence.

8. A new § 11.10 is added under the center heading "General Provisions" to read as follows:

## **§ 11.10 Maintenance of records.**

Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawing, specification, must include all pertinent information such as stamps, initials, and signatures etc. The licensee shall maintain adequate safeguards against tampering with and loss of records.

9. In § 11.13, paragraph (b) is revised to read as follows:

## **§ 11.13 Special requirements for transportation.**

(b) Each licensee who, 365 days after Commission approval of the amended security plan submitted in accordance with § 11.11(a), transports or delivers to a carrier for transport special nuclear material subject to the physical protection requirement of §§ 73.20, 73.25, 73.26, or 73.27 of this chapter shall confirm and record prior to shipment the name and special nuclear material access authorization number of all individuals identified in paragraph (a) of this section assigned to the shipment. The licensee shall retain this record for three years after the last shipment is made. However, the licensee need not confirm and record the special nuclear material access authorization number in

the case of any individual for whom an application has been submitted and is pending before the NRC in accordance with paragraph (a) of this section.

# **PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL**

10. The authority citation for Part 25 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

## **§ 25.11 [Amended]**

11. Section 25.11 is amended by changing "two years" to "three years" in the last sentence.

12. In § 25.13, the existing test is designated paragraph (a) and a new paragraph (b) is added and the section heading revised to read as follows:

## **§ 25.13 Maintenance of records.**

(b) Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

## **§ 25.23 [Amended]**

13. In § 25.23, the introductory text is amended by changing "one year" to "three years" in the fifth sentence.

## **§ 25.35 [Amended]**

14. In § 25.35, the last sentence of the existing text is amended by changing "two years" to "three years."

# **PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL**

15. The authority citation for Part 30 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

16. In § 30.34, paragraph (g) is revised to read as follows:

## **§ 30.34 Terms and conditions of licenses.**

(g) Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators shall test the generator eluates for molybdenum-99 breakthrough in accordance with § 35.14(b)(4) (i) through (iv) of this chapter. The licensee shall record the results of each test and retain each record for three years after the record is made.

17. In § 30.51, paragraph (c) is removed, paragraph (d) is redesignated (c), and paragraphs (a), (b), and (c)(1) are revised to read as follows:

## **§ 30.51 Records.**

(a) Each person who receives byproduct material pursuant to a license issued pursuant to the regulations in this part and Parts 31 through 35 of this chapter shall keep records showing the receipt, transfer, and disposal of the byproduct material as follows:

(1) The licensee shall retain each record of receipt of byproduct material as long as the material is possessed and for three years following transfer or disposal of the material.

(2) The licensee who transferred the material shall retain each record of transfer for three years after each transfer unless a specific requirement in another part of the regulations in this chapter dictates otherwise.

(3) The licensee who disposed of the material shall retain each record of disposal of byproduct material until the Commission terminates each license that authorizes disposal of the material.

(b) The licensee shall retain each record that is required by the regulations in this part and Parts 31 through 35 of this chapter or by license condition for the period specified by the appropriate regulation or license condition. If a retention period is not otherwise specified by regulation or license condition, the record must be retained until the Commission terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

(c)(1) Records which must be maintained pursuant to this part and Parts 31 through 35 of this chapter may be the original or a reproduced copy or microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for



producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

\* \* \* \* \*

### PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

18. The authority citation for Part 31 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

19. In § 31.5, paragraph (c)(4) is revised to read as follows:

§ 31.5 Certain measuring, gauging, or controlling devices.<sup>2</sup>

\* \* \* \* \*

(c) \* \* \*

(4) Shall maintain records showing compliance with the requirements of paragraphs (c)(2) and (c)(3) of this section. The records must show the results of tests. The records also must show the dates of performance of, and the names of persons performing, testing, installing, servicing, and removing from the installation radioactive material and its shielding or containment. The licensee shall retain these records as follows:

(i) Each record of a test for leakage or radioactive material required by paragraph (c)(2) of this section must be retained for three years after the next required leak test is performed or until the sealed source is transferred or disposed of.

(ii) Each record of a test of the on-off mechanism and indicator required by paragraph (c)(2) of this section must be retained for three years after the next required test of the on-off mechanism and indicator is performed or until the sealed source is transferred or disposed of.

(iii) Each record that is required by paragraph (c)(3) of this section must be retained for three years from the date of the recorded event or until the device is transferred or disposed of.

\* \* \* \* \*

20. A new § 31.12 is added to read as follows:

<sup>2</sup> Persons possessing byproduct material in devices under the general license in § 31.5 before January 15, 1975, may continue to possess, use, or transfer that material in accordance with the requirements of § 31.5 in effect on January 14, 1975.

### § 31.12 Maintenance of records.

Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as letters, stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

### PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

21. The authority citation for Part 32 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

22. A new § 32.3 is added to read as follows:

### § 32.3 Maintenance of records.

Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy of a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

### PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

23. The authority citation for Part 34 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

24. A new § 34.4 is added to read as follows:

### § 34.4 Maintenance of records.

Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy of a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

### § 34.24 [Amended]

25. Section 34.24 is amended by changing "two years" to "three years" in the next to last sentence.

26. In § 34.25, paragraph (c) is revised to read as follows:

§ 34.25 Leak testing, repair, tagging, opening, modification, and replacement of sealed sources.

\* \* \* \* \*

(c) The leak test must be capable of detecting the presence of 0.005 microcurie of removable contamination on the sealed source. An acceptable leak test for sealed sources in the possession of a radiography licensee would be to test at the nearest accessible point to the sealed-source storage position, or other appropriate measuring point, by a procedure to be approved pursuant to § 34.11(f). Each record of leak test results must be kept in units of microcuries [or disintegrations per minute (dpm)] and retained for inspection by the Commission for three years after it is made.

\* \* \* \* \*

### § 34.26 [Amended]

27. Section 34.26 is amended by changing "two years" to "three years" in the last sentence.

28. In § 34.27, the introductory paragraph is revised to read as follows:

### § 34.27 Utilization logs.

Each licensee shall maintain current logs, which shall be kept available for three years from the date of the recorded event, for inspection by the Commission, at the address specified in



the license, showing for each sealed source the following information:

29. In § 34.28, paragraph (b) is revised to read as follows:

**§ 34.28 Inspection and maintenance of radiographic exposure devices, storage containers, and source changers.**

(b) The licensee shall conduct a program for inspection and maintenance of radiographic exposure devices, storage containers, and source changers at intervals not to exceed three months or prior to the first use thereafter to ensure proper functioning of components important to safety. The licensee shall retain records of these inspections and maintenance for three years.

30. In § 34.29, paragraph (c) is revised to read as follows:

**§ 34.29 Permanent radiographic installations.**

(c) The alarm system must be tested at intervals not to exceed three months or prior to the first use thereafter of the source in the installation. The licensee shall retain records of these tests for three years.

31. In § 34.32, the introductory paragraph is revised to read as follows:

**§ 34.32 Operating and emergency procedures.**

The licensee shall retain a copy of current operating and emergency procedures as a record until the Commission terminates the license that authorizes the activity for which the procedures were developed and, if superseded, retain the superseded material for three years after each change. These procedures must include instructions in at least the following:

32. In § 34.33, paragraphs (b) and (e) are revised to read as follows:

**§ 34.33 Personnel monitoring.**

(b) Pocket dosimeters must be read and exposures recorded daily. The licensee shall retain each record of these exposures for three years after the record is made.

(e) Reports received from the film badge or TLD processor must be retained for inspection until the Commission terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

**PART 35—MEDICAL USE OF BYPRODUCT MATERIAL**

33. The authority citation for Part 35 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

34. A new § 35.5 is added to read as follows:

**§ 35.5 Maintenance of records.**

Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

**§ 35.27 [Amended]**

35. Section 35.27 paragraph (c) is amended by changing "two years" to "three years."

**§ 35.29 [Amended]**

36. Section 35.29, paragraph (b) is amended by changing "two years" to "three years."

**§ 35.50 [Amended]**

37. Section 35.50, paragraph (e) introductory text is amended by changing "two years" to "three years."

**§ 35.51 [Amended]**

38. Section 35.51, paragraph (d) introductory text is amended by changing "two years" to "three years."

**§ 35.53 [Amended]**

39. Section 35.53, paragraph (c) introductory text is amended by changing "two years" to "three years."

**§ 35.59 [Amended]**

40. Section 35.59, paragraph (i) is amended by changing "two years" to "three years."

**§ 35.70 [Amended]**

41. Section 35.70, paragraph (h) is amended by changing "two years" to "three years."

**§ 35.80 [Amended]**

42. Section 35.80, paragraph (f) is amended by changing "two years" to "three years."

**§ 35.92 [Amended]**

43. Section 35.92, paragraph (b) is amended by changing "two years" to "three years."

**§ 35.204 [Amended]**

44. Section 35.204, paragraph (c) is amended by changing "two years" to "three years."

**§ 35.310 [Amended]**

45. Section 35.310, paragraph (b) is amended by changing "two years" to "three years."

**§ 35.315 [Amended]**

46. Section 35.315, paragraph (a)(4) is amended by changing "two years" to "three years."

**§ 35.404 [Amended]**

47. Section 35.404, paragraph (b) is amended by changing "two years" to "three years."

**§ 35.406 [Amended]**

48. Section 35.406, paragraph (d) is amended by changing "two years" to "three years."

**§ 35.410 [Amended]**

49. Section 35.410, paragraph (b) is amended by changing "two years" to "three years."

**§ 35.415 [Amended]**

50. Section 35.415, paragraph (a)(4) is amended by changing "two years" to "three years."

**§ 35.610 [Amended]**

51. Section 35.610, paragraph (c) is amended by changing "two years" to "three years."

**§ 35.615 [Amended]**

52. Section 35.615, paragraph (d)(4) is amended by changing "two years" to "three years."

**§ 35.634 [Amended]**

53. Section 35.634, paragraph (c) is amended by changing "two years" to "three years."

54. Section 35.634, paragraph (f) is amended by changing "two years" to "three years."

**§ 35.636 [Amended]**

55. Section 35.636, paragraph (c) is amended by changing "two years" to "three years."



## PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

56. The authority citation for Part 40 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

57. In § 40.26, paragraph (c)(2) is revised to read as follows:

### § 40.26 General license for possession and storage of byproduct material as defined in this part.

\* \* \* \* \*

(c) \* \* \*

(2) The documentation of daily inspections of tailings or waste retention systems and the immediate notification of the appropriate NRC regional office as indicated in Appendix D to 10 CFR Part 20 of this chapter, or the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of any failure in a tailings or waste retention system that results in a release of tailings or waste into unrestricted areas, or of any unusual conditions (conditions not contemplated in the design of the retention system) that if not corrected could lead to failure of the system and result in a release of tailings or waste into unrestricted areas; and any additional requirements the Commission may by order deem necessary. The licensee shall retain this documentation of each daily inspection as a record for three years after each inspection is documented.

\* \* \* \* \*

58. In § 40.35, paragraph (e)(3) is revised to read as follows:

### § 40.35 Conditions of specific licenses issued pursuant to § 40.34.

\* \* \* \* \*

(e) \* \* \*

(3) Keep records showing the name, address, and a point of contact for each general license to whom he or she transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in § 40.25 or equivalent regulations of an Agreement State. The records must be retained for three years from the date of transfer and must show the date of each transfer, the quantity of depleted uranium in each product or device transferred, and compliance with the report requirements of this section.

59. In § 40.61, paragraph (c) is removed, paragraph (d) is redesignated (c), and paragraphs (a), (b), and (c)(1) are revised to read as follows:

## Records, Reports, and Inspections

### § 40.61 Records.

(a) Each person who receives source or byproduct material pursuant to a license issued pursuant to the regulations in this part shall keep records showing the receipt, transfer, and disposal of this source or byproduct material as follows:

(1) The licensee shall retain each record of receipt of source or byproduct material as long as the material is possessed and for three years following transfer or disposition of the source or byproduct material.

(2) The licensee who transferred the material shall retain each record of transfer or source or byproduct material until the Commission terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

(3) The licensee shall retain each record of disposal of source or byproduct material until the Commission terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

(4) If source or byproduct material is combined or mixed with other licensed material and subsequently treated in a manner that makes direct correlation of a receipt record with a transfer, export, or disposition record impossible, the licensee may use evaluative techniques (such as first-in-first-out), to make the records that are required by this Part account for 100 percent of the material received.

(b) The licensee shall retain each record that is required by the regulations in this part or by license condition for the period specified by the appropriate regulation or license condition. If a retention period is not otherwise specified by regulation or license condition, each record must be maintained until the Commission terminates the license that authorizes the activity that is subject to the recordkeeping requirement.

(c)(1) Records which must be maintained pursuant to this part may be the original or reproduced copy or microform if the reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps,

initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

\* \* \* \* \*

60. In Appendix A to Part 40, I, Technical Criteria, the second paragraph of Criterion 8 and Criterion 8A are revised to read as follows:

## Appendix A [Amended]

### I. Technical Criteria

\* \* \* \* \*

#### Criterion 8 \* \* \*

Checks must be made and logged hourly of all parameters (e.g., differential pressures and scrubber water flow rates) that determine the efficiency of yellowcake stack emission control equipment operation. The licensee shall retain each log as a record for three years after the last entry in the log is made. It must be determined whether or not conditions are within a range prescribed to ensure that the equipment is operating consistently near peak efficiency; corrective action must be taken when performance is outside of prescribed ranges. Effluent control devices must be operative at all times during drying and packaging operations and whenever air is exhausting from the yellowcake stack. Drying and packaging operations must terminate when controls are inoperative. When checks indicate the equipment is not operating within the range prescribed for peak efficiency, actions must be taken to restore parameters to the prescribed range. When this cannot be done without shutdown and repairs, drying and packaging operations must cease as soon as practicable. Operations may not be restarted after cessation due to off-normal performance until needed corrective actions have been identified and implemented. All these cessations, corrective actions, and restarts must be reported to the appropriate NRC regional office as indicated in Criterion 8A, in writing, within ten days of the subsequent restart. \* \* \*

\* \* \* \* \*

Criterion 8A—Daily inspections of tailings or waste retention systems must be conducted by a qualified engineer or scientist and documented. The licensee shall retain the documentation for each daily inspection as a record for three years after the documentation is made. The appropriate NRC regional office as indicated in Appendix D to 10 CFR Part 20 of this chapter, or the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, must be immediately notified of any failure in a tailings or waste retention system that results in a release of tailings or waste into unrestricted areas, or of any unusual conditions (conditions not contemplated in the design of the retention system) that is not corrected could indicate the potential or lead to failure of the system and result in a



release of tailings or waste into unrestricted areas.

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

61. The authority citation for Part 50 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

62. In § 50.36, the introductory text of paragraph (c) and paragraphs (c) (1), and (c)(2), and (c)(7) are revised to read as follows:

### § 50.36 Technical specifications.

(c) Technical specifications will include items in the following categories:

(1) *Safety limits, limiting safety system settings, and limiting control settings.* (i)(A) Safety limits for nuclear reactors are limits upon important process variables that are found to be necessary to reasonably protect the integrity of certain of the physical barriers that guard against the uncontrolled release of radioactivity. If any safety limit is exceeded, the reactor must be shut down. The licensee shall notify the Commission, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence. Operation must not be resumed until authorized by the Commission. The licensee shall retain the record of the results of each review until the Commission terminates the license for the reactor, except for nuclear power reactors licensed under § 50.21(b) or § 50.22 of this part. For these reactors, the licensee shall notify the Commission as required by § 50.72 and submit a Licensee Event Report to the Commission as required by § 50.73. Licensees in these cases shall retain the records of the review for a period of three years following issuance of a Licensee Event Report.

(B) Safety limits for fuel reprocessing plants are those bounds within which the process variables must be maintained for adequate control of the operation and that must not be exceeded in order to protect the integrity of the physical system that is designed to guard against the uncontrolled release or radioactivity. If any safety limit for a fuel reprocessing plant is exceeded, corrective action must be taken as stated in the technical specification or the affected part of the process, or the entire process if required,

must be shut down, unless this action would further reduce the margin of safety. The licensee shall notify the Commission, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence. If a portion of the process or the entire process has been shutdown, operation must not be resumed until authorized by the Commission. The licensee shall retain the record of the results of each review until the Commission terminates the license for the plant.

(ii)(A) Limiting safety system settings for nuclear reactors are settings for automatic protective devices related to those variables having significant safety functions. Where a limiting safety system setting is specified for a variable on which a safety limit has been placed, the setting must be so chosen that automatic protective action will correct the abnormal situation before a safety limit is exceeded. If, during operation, it is determined that the automatic safety system does not function as required, the licensee shall take appropriate action, which may include shutting down the reactor. The licensee shall notify the Commission, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence. The licensee shall retain the record of the results of each review until the Commission terminates the license for the reactor except for nuclear power reactors licensed under § 50.21(b) or § 50.22 of this part. For these reactors, the licensee shall notify the Commission as required by § 50.72 and submit a Licensee Event Report to the Commission as required by § 50.73. Licensees in these cases shall retain the records of the review for a period of three years following issuance of a Licensee Event Report.

(B) Limiting control settings for fuel reprocessing plants are settings for automatic alarm or protective devices related to those variables having significant safety functions. Where a limiting control setting is specified for a variable on which a safety limit has been placed, the setting must be so chosen that protective action, either automatic or manual, will correct the abnormal situation before a safety limit is exceeded. If, during operation, the automatic alarm or protective devices do not function as required, the licensee shall take appropriate action to maintain the variables within the limiting control-setting values and to repair promptly the automatic devices or to shut down the affected part of the

process and, if required, to shut down the entire process for repair of automatic devices. The licensee shall notify the Commission, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence. The licensee shall retain the record of the results of each review until the Commission terminates the license for the plant.

(2) *Limiting conditions for operation.* Limiting conditions for operation are the lowest functional capability or performance levels of equipment required for safe operation of the facility. When a limiting condition for operation of a nuclear reactor is not met, the licensee shall shut down the reactor or follow any remedial action permitted by the technical specifications until the condition can be met. When a limiting condition for operation of any process step in the system of a fuel reprocessing plant is not met, the licensee shall shut down that part of the operation or follow any remedial action permitted by the technical specifications until the condition can be met. In the case of a nuclear reactor not licensed under § 50.21(b) or § 50.22 of this part or fuel reprocessing plant, the licensee shall notify the Commission, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence. The licensee shall retain the record of the results of each review until the Commission terminates the license for the nuclear reactor or the fuel reprocessing plant. In the case of nuclear power reactors licensed under § 50.21(b) or § 50.22, the licensee shall notify the Commission if required by § 50.72 and shall submit a Licensee Event Report to the Commission as required by § 50.73. In this case, licensees shall retain records associated with preparation of a Licensee Event Report for a period of three years following issuance of the report. For events which do not require a Licensee Event Report, the licensee shall retain each record as required by the technical specifications.

(7) *Written Reports.* Licensees for nuclear power reactors licensed under § 50.21(b) and § 50.22 of this part shall submit written reports to the Commission in accordance with § 50.73 of this part for events described in paragraphs (c)(1) and (c)(2) of this section. For all licensees, the



Commission may require Special Reports as appropriate.

63. In § 50.36a, paragraph (a)(1) is revised to read as follows:

**§ 50.36a Technical specifications on effluents from nuclear power reactors.**

(a) \* \* \*

(1) That operating procedures developed pursuant to § 50.34a(c) for the control of effluents be established and followed and that equipment installed in the radioactive waste system, pursuant to § 50.34(a), be maintained and used. The licensee shall retain the operating procedures in effect as a record until the Commission terminates the reactor license and shall retain each superseded revision of the procedures for three years from the date it was superseded.

64. In § 50.48, paragraph (a) is revised to read as follows:

**§ 50.48 Fire protection.**

(a) Each operating nuclear power plant must have a fire protection plan that satisfies Criterion 3 of Appendix A of this part. This fire protection plan must describe the overall fire protection program for the facility, identify the various positions within the licensee's organization that are responsible for the program, state the authorities that are delegated to each of these positions to implement those responsibilities, and outline the plans for fire protection, fire detection and suppression capability, and limitation of fire damage. The plan must also describe specific features necessary to implement the program described above, such as administrative controls and personnel requirements for fire prevention and manual fire suppression activities, automatic and manually operated fire detection and suppression systems, and the means to limit fire damage to structures, systems, or components important to safety so that the capability to safely shut down the plant is ensured.<sup>3</sup> The licensee shall

retain the fire protection plan and each change to the plan as a record until the Commission terminates the reactor license and shall retain each superseded revision of the procedures for three years from the date it was superseded.

65. In § 50.49, the introductory text of paragraph (d) is revised to read as follows:

**§ 50.49 Environmental qualification of electric equipment important to safety for nuclear power plants.**

(d) The applicant or licensee shall prepare a list of electric equipment important to safety covered by this section. In addition, the applicant or licensee shall include the information in paragraphs (d)(1), (2), and (3) of this section for this electric equipment important to safety in a qualification file. The applicant or licensee shall keep the list and information in the file current and retain the file in auditable form for the entire period during which the covered item is installed in the nuclear power plant or is stored for future use to permit verification that each item of electric equipment is important to safety meets the requirements of paragraph (j) of this section.

66. In § 50.54, the introductory text of paragraph (p)(2) and paragraph (q) are revised to read as follows:

**§ 50.54 Conditions of licenses.**

(p) \* \* \*

(2) The licensee may make changes to the plans referenced in paragraph (p)(1) without prior Commission approval if the changes do not decrease the safeguards effectiveness of the plan. The licensee shall maintain records of changes to the plans made without prior Commission approval for a period of three years from the date of the change, and shall submit, as specified in § 50.4, a report containing a description of each change within two months after the change is made. Prior to the safeguards contingency plan being put into effect, the licensee shall have:

(q) A licensee authorized to possess and operate a nuclear power reactor shall follow and maintain in effect emergency plans which meet the standards in § 50.47(b) and the requirements in Appendix E of this part. A licensee authorized to possess and/or operate a research reactor or a fuel facility shall follow and maintain in effect emergency plans which meet the

requirements in Appendix E to this part. The licensee shall retain the emergency plan and each change that decreases the effectiveness of the plan as a record until the Commission terminates the license for the nuclear power reactor. The nuclear power reactor licensee may make changes to these plans without Commission approval only if the changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of § 50.47(b) and the requirements of Appendix E to this part. The research reactor and/or the fuel facility licensee may make changes to these plans without Commission approval only if these changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the requirements of Appendix E to this part. This nuclear power reactor, research reactor, or fuel facility licensee shall retain a record of each change to the emergency plan made without prior Commission approval for a period of three years from the date of the change. Proposed changes that decrease the effectiveness of the approved emergency plans may not be implemented without application to and approval by the Commission. The licensee shall submit, as specified in § 50.4, a report of each proposed change for approval. If a change is made without approval, the licensee shall submit, as specified in § 50.4, a report of each change within 30 days after the change is made.

67. In § 50.71, paragraph (c) and (d)(1) are revised, and a new (e)(6) is added to read as follows:

**§ 50.71 Maintenance of records, making of reports.**

(c) Records that are required by the regulations in this part, by license condition, or by technical specifications, must be retained for the period specified by the appropriate regulation, license condition, or technical specification. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility license.

(d)(1) Records which must be maintained pursuant to this part may be the original or a reproduced copy or microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability of producing legible, accurate, and

<sup>3</sup> Basic fire protection guidance for nuclear power plants is contained in two NRC documents:

• Branch Technical Position Auxiliary Power Conversion System Branch BTP APCSB 9.5-1, "Guidelines for Fire Protection for Nuclear Power Plants," for new plants docketed after July 1, 1976, dated May 1976.

• Appendix A to BTP APCSB 9.5-1, "Guidelines for Fire Protection for Nuclear Power Plants Docketed Prior to July 1, 1976," for plants that were operating or under various stages of design or construction before July 1, 1976, dated August 23, 1976.

Also see Note 4



complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

(e) \* \* \*

(6) The updated FSAR shall be retained by the licensee until the Commission terminates their license.

68. In Appendix R to Part 50, Section III, Specific Requirements, paragraph I.3.d. is revised to read as follows:

**Appendix R—Fire Protection Program For Nuclear Power Facilities Operating Prior to January 1, 1979**

III. \* \* \*

I. \* \* \*

3. \* \* \*

(d) At 3-year intervals, a randomly selected unannounced drill must be critiqued by qualified individuals independent of the licensee's staff. A copy of the written report from these individuals must be available for NRC review and shall be retained as a record as specified in § III.I.4 of this appendix.

**PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES**

69. The authority citation for Part 60 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

70. Section 60.4 is revised to read as follows:

**§ 60.4 Communications and records.**

(a) Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be addressed to the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Communications reports, and applications may be delivered in person at the Commission's offices at 1717 H Street NW., Washington DC, or 11555 Rockville Pike, Rockville, Maryland.

(b) Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be

stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

71. In § 60.71, the section heading and paragraph (b) are revised to read as follows:

**§ 60.71 Records and reports.**

(b) Records of the receipt, handling, and disposition of radioactive waste at a geologic repository operations area shall contain sufficient information to provide a complete history of the movement of the waste from the shipper through all phases of storage and disposal. DOE shall retain these records in a manner that ensures their useability for future generations in accordance with § 60.51(a)(2).

72. In § 60.72, paragraph (a) is revised to read as follows:

**§ 60.72 Construction records.**

(a) DOE shall maintain records of construction of the geologic repository operations area in a manner that ensures their useability for future generations in accordance with § 60.51(a)(2).

**PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE**

73. The authority citation for Part 61 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

74. In § 61.80 of Subpart G paragraphs (c), (e) and (f) are revised to read as follows:

**Subpart G—Records, Reports, Tests, and Inspections**

**§ 61.80 Maintenance of records, reports, and transfers.**

(c) Records which must be maintained pursuant to this part may be the original or a reproduced copy or a microform if this reproduced copy or microform is capable of producing copy that is clear and legible at the end of the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records

such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

(e) Notwithstanding paragraphs (a) through (d) of this section, the licensee shall record the location and the quantity of radioactive wastes contained in the disposal site and transfer these records upon license termination to the chief executive of the nearest municipality, the chief executive of the county in which the facility is located, the county zoning board or land development and planning agency, the State governor and other State, local, and Federal governmental agencies as designated by the Commission at the time of license termination.

(f) Following receipt and acceptance of a shipment of radioactive waste, the licensee shall record the date of disposal of the waste, the location in the disposal site, the condition of the waste packages as received, any discrepancies between materials listed on the manifest and those received, and any evidence of leaking or damaged packages or radiation or contamination levels in excess of limits specified in Department of Transportation and Commission regulations. The licensee shall briefly describe any repackaging operations of any of the waste packages included in the shipment, plus any other information required by the Commission as a license condition. The licensee shall retain these records until the Commission transfers or terminates the license that authorizes the activities described in this section.

**PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL**

75. The authority citation for Part 70 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

76. In § 70.22, paragraph (g), (h), (i), (j), and (k) are revised to read as follows:

**§ 70.22 Contents of applications.**

(g)(1) Each application for a license that would authorize the transport or delivery to a carrier for transport of special nuclear material in an amount specified in § 73.1(b)(2) of this chapter must include (i) a description of the plan for physical protection of special nuclear material in transit in accordance with §§ 73.20, 73.25, 73.26, 73.27, and



73.67(a), (e), and (g) for 10 kg or more of special nuclear material of low strategic significance, and § 73.70(g) of this chapter including, as appropriate, a plan for the selection, qualification, and training of armed escorts, or the specification and design of a specially designed truck or trailer, and (ii) a licensee safeguards contingency plan or response procedures, as appropriate, for dealing with threats, thefts, and radiological sabotage relating to the special nuclear material in transit.

(2) Each application for such a license involving formula quantities of strategic special nuclear material must include the first four categories of information contained in the applicant's safeguards contingency plan. (The first four categories of information, as set forth in Appendix C to Part 73 of this chapter, are Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix. The fifth category of information, Procedures, does not have to be submitted for approval.)

(3) The licensee shall retain this description of the plan for physical protection of special nuclear material in transit and the safeguards contingency plan or safeguards response procedures and each change to the plan or procedures as a record for a period of three years following the date on which the licensee last possessed the appropriate type and quantity of special nuclear material requiring this record under each license.

(h)(1) Each application for a license to possess or use at any site or contiguous sites subject to control by the licensee uranium-235 (contained in uranium enriched to 20 percent or more in the uranium-235 isotope), uranium-233, or plutonium alone or in any combination in a quantity of 5,000 grams or more computed by the formula,  $\text{grams} = (\text{grams contained U-235}) + 2.5 (\text{grams U-233} + \text{grams plutonium})$ , other than a license for possession or use of this material in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter, must include a physical security plan, consisting of two parts. Part I must address vital equipment, vital areas, and isolation zones, and must demonstrate how the applicant plans to meet the requirements of §§ 73.20, 73.40, 73.45, 73.46, 73.50, 73.60, 73.70, and 73.71 of this chapter in the conduct of the activity to be licensed, including the identification and description of jobs as required by § 11.11(a) of this chapter. Part II must list tests, inspections, and other means to demonstrate compliance with such requirements.

(2) The licensee shall retain a copy of this physical security plan and each

change to the plan as a record for a period of three years following the date on which the licensee last possessed the appropriate type and quantity of special nuclear material requiring this record under each license.

(i) Each application for a license to possess and use special nuclear material for processing and fuel fabrication, scrap recovery, or conversion of uranium hexafluoride must contain, in addition to the other information required by this section, plans for coping with emergencies.<sup>3</sup> The licensee shall retain a copy of these plans for coping with emergencies as records until the Commission terminates each license obtained by this application or any application for renewal of a license, and each change to the plan for three years after the date of change.

(j)(1) Each application for a license to possess or use at any site or contiguous sites subject to control by the licensee uranium-235 (contained in uranium enriched to 20 percent or more in the uranium-235 isotope), uranium-233, or plutonium alone or in any combination in a quantity of 5,000 grams or more computed by the formula,  $\text{grams} = (\text{grams contained U-235}) + 2.5 (\text{grams U-233} + \text{grams plutonium})$  other than a license for possession or use of this material in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter, must include a licensee safeguards contingency plan for dealing with threats, thefts, and radiological sabotage, as defined in Part 73 of this chapter, relating to nuclear facilities licensed under Part 50 of this chapter or to the possession of special nuclear material licensed under this part.

(2) Each application for such a license must include the first four categories of information contained in the applicant's safeguards contingency plan. (The first four categories of information, as set forth in Appendix C to Part 73 of this chapter, are Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix.) The fifth category of information, Procedures, does not have to be submitted for approval.

(3) The licensee shall retain a copy of this safeguards contingency plan as a record until the Commission terminates each license obtained by this application or any application for renewal of a license and retain each change to the plan as a record for three years after the date of the change.

(k) Each application for a license to possess or use at any site or contiguous

sites subject to control by the licensee special nuclear material of moderate strategic significance or 10 kg or more of special nuclear material of low strategic significance as defined under § 73.2 (x) and (y) of this chapter, other than a license for possession or use of this material in the operation of a nuclear power reactor licensed pursuant to Part 50 of this chapter, must include a physical security plan that demonstrates how the applicant plans to meet the requirements of § 73.67(d), (e), (f), and (g), as appropriate, of this chapter. The licensee shall retain a copy of this physical security plan as a record for the period during which the licensee possesses the appropriate type and quantity of special nuclear material requiring this record under each license and each change to the plan for three years after the change.

77. In § 70.24, paragraph (a)(3) is revised to read as follows:

#### § 70.24 Criticality accident requirements.

(a) \* \* \*

(3) The licensee shall maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm. These procedures must include the conduct of drills to familiarize personnel with the evacuation plan, and designation of responsible individuals for determining the cause of the alarm, and placement of radiation survey instruments in accessible locations for use in such an emergency. The licensee shall retain a copy of current procedures for each area as a record for as long as licensed special nuclear material is handled, used, or stored in the area. The licensee shall retain any superseded portion of the procedures for three years after the portion is superseded.

78. In § 70.32, the introductory text of paragraph (c)(2) and paragraphs (d), (e), and (g) are revised to read as follows:

#### § 70.32 Conditions of licenses.

(c) \* \* \*

(2) The licensee shall maintain records of changes to the material control and accounting program made without prior Commission approval, for three years after they are superseded, and shall furnish to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the appropriate NRC Regional Office shown in Appendix A to

<sup>3</sup> Emergency plans shall contain the elements that are listed in Section IV, "Content of Emergency Plans," of Appendix E to Part 50 of this chapter.



Part 73 of this chapter, a report containing a description of each change within:

(d) The licensee shall make no change which would decrease the effectiveness of the plan for physical protection of special nuclear material in transit prepared pursuant to § 70.22(g) or § 73.20(c) of this chapter without the prior approval of the Commission. A licensee desiring to make such changes shall submit an application for a change in the technical specifications incorporated in his or her license, if any, or for an amendment to the license pursuant to § 50.90 or § 70.34 of this chapter, as appropriate. The licensee may make changes to the plan for physical protection of special nuclear material without prior Commission approval if these changes do not decrease the effectiveness of the plan. The licensee shall retain a copy of the plan as a record for the period during which the licensee possesses a formula quantity of special nuclear material requiring this record under each license and each change to the plan for three years from the effective date of the change. A report containing a description of each change must be furnished the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the appropriate NRC Regional Office shown in Appendix A to Part 73 of this chapter within two months after the change.

(e) The licensee shall make no change which would decrease the effectiveness of a security plan prepared pursuant to §§ 70.22(h), 70.22(k), or 73.20(c) without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to its license pursuant to § 70.34. The licensee shall maintain records of changes to the plan made without prior Commission approval, for three years from the effective date of the change, and shall furnish to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the appropriate NRC Regional Office shown in Appendix A to Part 73 of this chapter, a report containing a description of each change within two months after the change is made.

(g) The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with Appendix C to Part 73 of this chapter for effecting the actions and decisions contained in the Responsibility Matrix

of its safeguard contingency plan. The licensee shall retain a copy of the safeguards contingency plan procedures as a record for the period during which the licensee possesses the appropriate type and quantity of special nuclear material requiring this record under each license for which the procedures were developed and each change to the plan for three years from the effective date of the change. The licensee shall make no change that would decrease the safeguards effectiveness of the first four categories of information (Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix) contained in any licensee safeguards contingency plan prepared pursuant to §§ 70.22(g), 70.22(j), 73.30(g), or 73.40 of this chapter without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to its license pursuant to § 70.34. The licensee may make changes to the licensee safeguards contingency plan without prior Commission approval if the changes do not decrease the safeguards effectiveness of the plan. The licensee shall maintain each change to the plan made without prior approval as a record during the period for which possession of a formula quantity of special nuclear material is authorized under a license and retain the superseded material for three years from the effective date of the change and shall furnish a report containing a description of each change within 60 days after the change is made to the Regional Administrator of the appropriate NRC Regional Office specified in Appendix A to Part 73 of this chapter, with a copy to the Director of Nuclear Material Safety and Safeguards.

79. In § 70.42, paragraphs (d)(1), (2), (3), (4), and (5) are revised to read as follows:

**§ 70.42 Transfer of special nuclear material.**

(d) (1) The transferor may have in his or her possession, and read, a current copy of the transferee's specific license or registration certificate. The transferor shall retain a copy of each license or certificate for three years from the date that it was obtained.

(2) The transferor may have in its possession a written certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of special nuclear material to be transferred, specifying the license or

registration certificate number, issuing agency, and expiration date. The transferor shall retain the written certification as a record for three years from the date of receipt of the certification;

(3) For emergency shipments the transferor may accept oral certification by the transferee that he or she is authorized by license or registration certificate to receive the type, form, and quantity of special nuclear material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within ten days. The transferor shall retain the written confirmation of the oral certification for three years from the date of receipt of the confirmation;

(4) The transferor may obtain other sources of information compiled by a reporting service from official records of the Commission or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registrations. The transferor shall retain the compilation of information as a record for three years from the date that it was obtained; or

(5) When none of the methods of verification described in paragraphs (d) (1) to (4) of this section are readily available or when a transferor desires to verify that information received by one of these methods is correct or up-to-date, the transferor may obtain and record confirmation from the Commission or the licensing agency of an Agreement State that the transferee is licensed to receive the special nuclear material. The transferor shall retain the record of confirmation for three years from the date the record is made.

80. In § 70.51, the paragraphs (b)(2), (3), (5), and (6), (c), the introductory text of (e)(1), (f)(2)(v), and (i)(1) are revised to read as follows:

**§ 70.51 Material balance, inventory, and records requirements.**

(b) (2) Each record that is required by the regulations in this part or by license condition must be maintained and retained for the period specified by the appropriate regulation or license condition. If a retention period is not otherwise specified by regulation or license condition, the licensee shall retain the record until the Commission terminates each license that authorizes the activity that is subject to the recordkeeping requirement.



(3) Each record of receipt, acquisition, or physical inventory of special nuclear material that must be maintained pursuant to paragraph (b)(1) of this section must be retained as long as the licensee retains possession of the material and for three years following transfer of such material.

(5) Each record of transfer of special nuclear material to other persons must be retained by the licensee who transferred the material until the Commission terminates the license authorizing the licensee's possession of the material. Each record required by paragraph (e)(1)(v) of this section must be made for three years after it is made.

(6) Each record of disposal of special nuclear material must be retained until the Commission terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

(c) Each licensee who is authorized to possess at any one time special nuclear material in a quantity exceeding one effective kilogram of special nuclear material shall establish, maintain, and follow written material control and accounting procedures that are sufficient to enable the licensee to account for the special nuclear material in the licensee's possession under license. The licensee shall retain these procedures until the Commission terminates the license that authorizes possession of the material and retain any superseded portion of the procedures for three years after the portion is superseded.

(e) \* \* \*

(1) Maintain procedures that include items listed in paragraphs (e)(1)(i), (ii), (iii), (iv), (v), (vi), and (vii) of this section and retain each record required in these paragraphs for three years after the record is made.

(f) \* \* \*

(2) \* \* \*

(v) Documentation in compliance with the requirements of paragraphs (f)(2)(i), (ii), (iii), and (iv) of this section. Each record documenting compliance with these requirements must be retained for three years after it is made.

(i)(1) Records which must be maintained pursuant to this part may be the original or a reproduced copy or microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period

specified by Commission regulations. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

81. In § 70.57, the introductory text of paragraph (b) and paragraphs (b)(2), (3), (4), (6), (7), the introductory text of (8), (11), and (12) are revised to read as follows:

**§ 70.57 Measurement control program for special nuclear materials control and accounting.**

(b) In accordance with § 70.58(f), each licensee who is authorized to possess at any one time and location strategic special nuclear material, or special nuclear material of moderate strategic significance, in a quantity exceeding one effective kilogram and to use such special nuclear material for activities other than those involved in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter, those involved in a waste disposal operation, or as sealed sources, shall establish and maintain a measurement control program for special nuclear materials control and accounting measurements. Each program function must be identified and assigned in the licensee organization in accordance with § 70.58(b)(2), and functional organizational relationships must be set forth in writing in accordance with § 70.58(b)(3). The program must be described in a manual which contains the procedures, instructions, and forms prepared to meet the requirements of this paragraph, including procedures for the preparation, review, approval, and prompt dissemination of any program modifications or changes. The licensee shall retain the current program as a record until the Commission terminates the license authorizing possession of the nuclear materials. The licensee's program shall include the following:

(2) Provisions must be made for management reviews to determine the adequacy of the program and to assess the applicability of current procedures and for planned audits to verify conformance with all aspects of the program. These reviews and audits must be performed at intervals not to exceed 12 months. Audits and reviews must be performed by trained individuals

independent of direct responsibility for the receipt, custody, utilization, measurement, measurement quality, and shipment of special nuclear material. The results of reviews and audits must be recorded and reported to licensee management. The licensee shall retain each record of a review or an audit for three years after the record is made.

(3) The licensee shall ensure that any person who contracts to perform materials control and accounting measurement services conforms with applicable requirements of paragraphs (b)(4) through (8) and (10) through (12) of this section. Conformance must include reporting by the contractor of sufficient error data to allow the licensee to calculate bias corrections and measurement limits of error. All statistical studies must be reported or references in the measurement report submitted to the licensee, who shall have access to the contractor's supporting control data. The licensee shall perform reviews to determine the adequacy of the contractor's program and audits to verify conformance with all aspects of the program. Reviews and audits must be performed at intervals not to exceed 12 months. The results of reviews and audits must be documented and reported to licensee management. The licensee shall retain the record of the results of the licensee review and audit of the contractor's program for three years after the record is made.

(4) In order to ensure that potential sources of sampling error are identified and that samples are representative, process and engineering tests must be performed using well characterized materials to establish or to verify the applicability of existing procedures for sampling special nuclear materials and for maintaining sample integrity during transport and storage. The licensee shall record the results of the above process and engineering tests and shall maintain those results as a record for as long as that sampling systems is in use and for three years following the last such use. The program must ensure that such procedures are maintained and followed, and that sampling is included in the procedures for estimating biases, limits for systematic errors, and random error variances.

(6) To ensure the adequacy of each measurement system with respect to process flows, sampling and measurement points, and nominal material compositions, engineering analyses and evaluations must be made of the design, installation, preoperational tests, calibration, and the operation of each system. These



analyses and evaluations must be repeated whenever a significant change is made in any component of a system. The licensee shall record the results of these analyses and evaluations and retain these records for three years after the life of the process or equipment.

(7) Procedures and performance criteria must be established for the training, qualifying, and periodic requalifying of all personnel who perform sampling and measurements for materials control and accounting purposes. The licensee shall retain as a record the results of personnel qualification or requalification for three years after the record is made.

(8) The program must generate current data on the performance of measuring processes, including, as appropriate, values for bias corrections and their uncertainties, random error variances, limits for systematic errors, and other parameters needed to establish the uncertainty of measurements pertaining to materials control and accounting. The program data must reflect the current process and measurement condition existing at the time the control measurements are made. The licensee shall record this data and retain this record for three years after the record is made. Measurements which are not controlled by the program may not be used for materials control or for accounting purposes. The program must include:

(11)(i) The licensee shall establish and maintain a statistical control system, including control charts and formal statistical procedures, designed to monitor the quality of each type of program measurement. The licensee shall retain a copy of the current statistical control system as a record until the Commission terminates each license that authorizes possession of the material that the system affects and shall retain copies of such system documents for previous inventory periods as a record for three years after they are replaced.

(ii) Control chart limits must be established to be equivalent to levels of significance of 0.05 and 0.001. Whenever control data exceed the 0.05 control limits, the licensee shall investigate the condition and take corrective action in a timely manner. The licensee shall record the results of these investigations and actions and retain each record for three years after the record is made. Whenever the control data exceed the 0.001 control limits, the measurement system that generated the data must not be used for material control and accounting purposes until the deficiency

has been corrected and the system has been brought into control at the 0.05 control level.

(12) The licensee shall provide a records system in which all data, information, reports, and documents generated by the measurement control program must be retained for three years. Records must include a summary of the error data utilized in the limit of error calculations performed for each material balance period. The records system must be organized for efficient retrieval of program information. Each reported result must be readily relatable to the original measurement data and to all relevant measurement control information, including pertinent calibration data. Records must be available for NRC inspection.

82. In § 70.58, paragraphs (b)(3), (e), (f), (h), and (j) and the introductory text of paragraphs (i) and (k) are revised to read as follows:

**§ 70.58 Fundamental nuclear material controls.**

(b) \* \* \*

(3) Material control and accounting functional and organizational relationships must be set forth in writing in job descriptions, organizational directives, instructions, procedure manuals, etc. This documentation must include position qualification requirements and definitions of authorities, responsibilities, and duties. Delegations of material control and accounting responsibilities and authority must be in writing. The licensee shall retain this documentation as a record until the Commission terminates each license that authorizes the activity that is subject to retention of the documentation, and if any portion of the documentation is superseded, retain the superseded material for three years after each change.

(e) A system must be established, maintained, and followed for the measurement of all special nuclear material received, produced, or transferred between MBAs, transferred from MBAs to ICAs, on inventory, or shipped, discarded, or otherwise removed from inventory and for the determination of the limit of error associated with each such measured quantity except for plutonium-beryllium sources; samples that have been determined by other means to contain less than 10 grams U-235, U-233, or plutonium each; and reactor-irradiated fuels involved in research, development, and evaluation programs in facilities

other than irradiated-fuel reprocessing plants. The system must be described in writing and provide for sufficient measurements to substantiate the quantities of element and isotope measured and the associated limits or error. The licensee shall record the required measurements and associated limits of error and shall retain any record associated with this system for three years after the record is made.

(f) A program must be established, maintained, and followed pursuant to § 70.57(b) for the continuing determination and control of the systematic and random errors of measurement processes at a level commensurate with the requirements of § 70.51(e)(5). The licensee shall retain each completed record required by the program for three years after the record is made.

(h) A system of storage and internal handling controls must be established, maintained, and followed to provide current knowledge of the identity, quantity, and location of all special nuclear material contained within a plant in discrete items and containers. The licensee shall include procedures as specified in § 70.51(e)(1) and retain any record associated with the procedures for six months after the record is made;

(i) Procedures for special nuclear material scrap control must be established, maintained, and followed to limit the accumulation and the uncertainty of measurement of these materials on inventory. The licensee shall retain a copy of the current procedures as a record until the Commission terminates each license that authorizes the activity that is subject to the retention of procedures and, if any portion of the procedures is superseded, retain the superseded portion for three years after each change. Such procedures must include:

(j) Physical inventory procedures must be established, maintained, and followed so that special nuclear material balance and their measurement uncertainties can be determined on the basis of measurements in compliance with the material balance and inventory requirements and criteria specified in § 70.51. The licensee shall retain a copy of the current procedures as a record until the Commission terminates each license that authorizes the activity that is subject to the retention of procedures and, if any portion of the procedures is superseded, retain the superseded portion for three years after each change.



(k) A system of records and reports must be established, maintained, and followed that will provide information sufficient to locate special nuclear material and to close a measured material balance around each material balance area and the total plant, as specified in § 70.51. As required by § 70.51, the licensee shall retain the records associated with this system for three years after the records are made. This system must include:

#### PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

83. The authority citation for Part 71 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 68 Stat. 1242, as amended (42 U.S.C. 5841).

84. In § 71.1, the existing paragraph is designated (a), the section heading is revised, and a new paragraph (b) is added to read as follows:

##### § 71.1 Communications and records.

(b) Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

85. Section 71.91 is revised to read as follows:

##### § 71.91 Records.

(a) Each licensee shall maintain for a period of three years after shipment a record of each shipment of licensed material not exempt under § 71.10, showing, where applicable:

(1) Identification of the packaging by model number;

(2) Verification that there are no significant defects in the packaging, as shipped;

(3) Volume and identification of coolant;

(4) Type and quantity of licensed material in each package, and the total quantity of each shipment;

(5) For each item of irradiated fissile material:

(i) Identification by model number and/or serial number;

(ii) Irradiation and decay history to the extent appropriate to demonstrate that its nuclear and thermal characteristics comply with license conditions; and

(iii) Any abnormal or unusual condition relevant to radiation safety.

(6) Date of the shipment;

(7) For Fissile Class III and for Type B packages, any special controls exercised;

(8) Name and address of the transferee;

(9) Address to which the shipment was made; and

(10) Results of the determinations required by § 71.87 and by the conditions of the package approval.

(b) The licensee shall make available to the Commission for inspection, upon reasonable notice, all records required by this part. Records are valid only if stamped, initialed, or signed and dated by authorized personnel or otherwise authenticated.

(c) Each licensee shall maintain sufficient written records to furnish evidence of the quality of packaging. The records to be maintained include results of the determinations required by § 71.85; design, fabrication, and assembly records; results of reviews, inspections, tests, and audits; results monitoring work performance and materials analyses; and results of maintenance, modification, and repair activities. Inspection, test, and audit records must identify the inspector or data recorder, the type of observation, the results, the acceptability and the action taken in connection with any deficiencies noted. The records must be retained for three years after the life of the packaging to which they apply.

86. In § 71.97, paragraphs (c)(4), (e), and (f)(2) are revised to read as follows:

##### § 71.97 Advance notification of shipment of nuclear waste.

(c) \* \* \*

(4) The licensee shall retain a copy of the notification as a record for three years.

(e) *Revision notice.* A licensee who finds that schedule information previously furnished to a governor or governor's designee in accordance with this section will not be met, shall telephone a responsible individual in the office of the governor of the State or of

the governor's designee and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the name of the individual contacted for three years.

(f) \* \* \*

(2) The licensee shall state in the notice that it is a cancellation and shall identify the advance notification which is being cancelled. The licensee shall retain a copy of the notice as a record for three years.

87. In § 71.101, paragraph (b) is revised to read as follows:

#### Subpart H—Quality Assurance

##### § 71.101 Quality assurance requirements.

(b) Each licensee shall establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of §§ 71.101 through 71.137 of this subpart and satisfying any specific provisions that are applicable to the licensee's activities, including procurement of packaging. The licensee shall apply each of the applicable criteria in a graded approach, i.e., to an extent that is consistent with its importance to safety.

88. In § 71.105, paragraph (a) is revised to read as follows:

##### § 71.105 Quality assurance program.

(a) The licensee shall establish, at the earliest practicable time, consistent with the schedule for accomplishing the activities, a quality assurance program that complies with the requirements of §§ 71.101 through 71.137 of this subpart. The licensee shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which packaging is used. The licensee shall identify the material and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.

89. Section 71.135 is revised to read as follows:

##### § 71.135 Quality assurance records.

The licensee shall maintain sufficient written records to describe the activities affecting quality. The records must include the instructions, procedures, and drawings required by § 71.111 to prescribe quality assurance activities and must include closely related specifications such as required



qualifications of personnel, procedures, and equipment. The records must include the instructions or procedures which establish a records retention program that is consistent with applicable regulations and designates factors such as duration, location, and assigned responsibility. The licensee shall retain these records for three years beyond the date when the licensee last engages in the activity for which the quality assurance program was developed. If any portion of the written procedures or instructions is superseded, the licensee shall retain the superseded material for three years after it is superseded.

### PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

90. The authority citation for Part 73 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 68 Stat. 1242, as amended (42 U.S.C. 5841).

91. In § 73.24, paragraph (b)(1) is revised to read as follows:

#### § 73.24 Prohibitions.

(b) \* \* \*

(1) The licensee shall confirm and log the arrival at the final destination of each individual shipment and retain the log for three years from the date of the last entry in the log. The licensee shall also schedule shipments to ensure that the total quantity for two or more shipments in transit at the same time does not equal or exceed the formula quantity, or

92. In § 73.26, paragraphs (c)(1)(ii) and (2), the introductory text of paragraph (d)(3), and paragraphs (d)(4) and (e)(1) are revised to read as follows:

#### § 73.26 Transportation physical protection systems, subsystems, components, and procedures.

(c) \* \* \*

(1) \* \* \*

(ii) The shipment must be protected at all times within the geographical limits of the United States as provided in this section and §§ 73.25 and 73.27. The licensee shall retain each record required by these sections for three years after the close of period for which the licensee possesses the special nuclear material under each license authorizing the licensee to ship this material, and superseded material for three years after each change.

(2) A licensee who exports a formula quantity of strategic special nuclear material shall comply with the

requirements of this section and §§ 73.25 and 73.27, as applicable, up to the first point where the shipment is taken off the transport outside the United States. The licensee shall retain each record required by these sections for three years after the close of period for which the licensee possesses the special nuclear material under each license authorizing the licensee to export this material, and superseded material for three years after each change.

(d) \* \* \*

(3) The licensee or the licensee's agent shall establish, maintain, and follow a written management system to provide for the development, revision, implementation, and enforcement of transportation physical protection procedures. The licensee or the agent shall retain as a record the current management system for three years after the close of period for which the licensee possesses the special nuclear material under the license for which the system was developed and, if any portion of the system is superseded, retain the superseded material for three years after each change. The system shall include:

(4) Neither the licensee nor the licensee's agent shall permit an individual to act as an escort or other security organization member unless the individual has been trained, equipped, and qualified to perform each assigned security job duty in accordance with Appendix B, of this part, "General Criteria for Security Personnel." Upon the request of an authorized representative of the Commission, the licensee or the agent shall demonstrate the ability of the physical security personnel to carry out their assigned duties and responsibilities. Armed escorts shall requalify in accordance with Appendix B to this part at least every 12 months. Each requalification must be documented. The licensee or the agent shall retain documentation of the initial qualification for the term of employment and of each requalification as a record for three years from the date of the requalification.

(e) *Contingency and Response Plans and Procedures.* (1) The licensee or the licensee's agent shall establish, maintain, and follow a written safeguards contingency plan for dealing with threats, thefts, and radiological sabotage related to strategic special nuclear material in transit subject to the provisions of this section. This safeguards contingency plan must be in accordance with the criteria in Appendix C of this part, "Licensee

Safeguards Contingency Plan." The licensee or the agent shall retain the contingency plan as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license for which the plan is used and superseded material for three years after each change.

93. In § 73.37, paragraphs (b)(2), (b)(5), and the introductory text of paragraph (b)(3) are revised to read as follows:

#### § 73.37 Requirements for physical protection of irradiated reactor fuel in transit.

(b) \* \* \*

(2) Include and retain a copy of current procedures for coping with circumstances that threaten deliberate damage to a spent fuel shipment and with other safeguards emergencies as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license for which the procedures were developed and, if any portion of the procedures is superseded, retain the superseded material for three years after each change.

(3) Include instructions for each escort and retain a copy of the current instructions as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license that authorizes the activity that requires the instruction and retain any superseded material for three years after each change. The instructions must direct that, upon detection of the abnormal presence of unauthorized persons, vehicles, or vessels in the vicinity of a spent fuel shipment or upon detection of a deliberately induced situation that has the potential for damaging a spent fuel shipment, the escort will:

(5) Provide for maintenance of a written log by the escorts and communications center personnel for each spent fuel shipment, which will include information describing the shipment and significant events that occur during the shipment, and will be available for review by authorized NRC personnel for a period of at least three years following completion of the shipment.

94. In § 73.40, paragraphs (b), (c)(2), and (d) are revised to read as follows:

#### § 73.40 Physical protection: General requirements at fixed sites.



(b) Each licensee subject to the requirements of §§ 73.20, 73.45, 73.46, 73.50, 73.55, or § 73.60 shall prepare a safeguards contingency plan in accordance with the criteria set forth in Appendix C to this part. The licensee shall retain the current plan as a record until the Commission terminates the license for which the plan was developed and, if any portion of the plan is superseded, retain the superseded material for three years after each change. The safeguards contingency plan must include plans for dealing with threats, thefts, and radiological sabotage relating to nuclear facilities licensed under Part 50 or to the possession of special nuclear material licensed under Part 70 of this chapter. Each licensee subject to the requirements of this paragraph shall submit to the Commission for approval the first four categories of information contained in the safeguards contingency plan. (The first four categories of information, as set forth in Appendix C to this part, are Background, Generic Planning Base, Licensee Planning Base, and Responsibility Matrix. The fifth category of information, Procedures, does not have to be submitted for approval.)<sup>1</sup> The plan becomes effective and must be followed by the licensee 30 days after approval by the Commission.

(c) \* \* \*

(2) Detailed procedures developed according to Appendix C to this part available at the licensee's site. The licensee shall retain a copy of the current procedures as a record until the Commission terminates the license for which the procedures were developed and, if any portion of the procedures is superseded, retain the superseded material for three years after each change, and

(d) The licensee shall provide for the implementation, revision, and maintenance of this safeguards contingency plan. To this end, the licensee shall provide for a review at least every twelve months of the safeguards contingency plan by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The review must include a review and audit of safeguards contingency procedures and practices, an audit of the

security system testing and maintenance program, and a test of the safeguards system along with commitments established for response by local law enforcement authorities. The results of the review and audit, along with recommendations for improvements must be documented, reported to the licensee's corporate and plant management, and kept available at the plant for inspection for a period of three years from the date of the review or audit.

95. In § 73.46, paragraphs (b)(3)(i), (b)(4), (d)(3), (d)(10), (d)(13), (h)(1), and (h)(2) are revised to read as follows:

**§ 73.46 Fixed site physical protection systems, subsystems, components, and procedures.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) Written security procedures that document the structure of the security organization and detail the duties of guards, watchmen, and other individuals responsible for security. The licensee shall retain a copy of the current procedures as a record until the Commission terminates the license for which they were developed and, if any portion of the procedures is superseded, retain the superseded material for three years after each change;

\* \* \* \* \*

(4) The licensee may not permit an individual to act as a guard, watchman, armed response person, or other member of the security organization unless the individual has been trained, equipped, and qualified to perform each assigned security job duty in accordance with Appendix B to this part "General Criteria for Security Personnel." Upon the request of an authorized representative of the Commission, the licensee shall demonstrate the ability of the physical security personnel, whether licensee or contractor employees, to carry out their assigned duties and responsibilities. Each guard, watchman, armed response person, or other member of the security organization, whether a licensee or contractor employee, shall requalify in accordance with Appendix B to this part at least every 12 months. This requalification must be documented. The licensee shall retain the documentation of each requalification as a record for three years after the requalification.

\* \* \* \* \*

(d) \* \* \*

(3) The licensee shall establish and follow written procedures that will permit access control personnel to identify those vehicles that are

authorized and those materials that are not authorized entry to protected, material access, and vital areas. The licensee shall retain a copy of the current procedures as a record until the Commission terminates each license for which the procedures were developed and, if any portion of the procedures is superseded, retain the superseded material for three years after each change.

\* \* \* \* \*

(10) Before existing from a material access area, containers of contaminated wastes must be drum scanned and tamper sealed by at least two individuals, working and recording their findings as a team, who do not have access to material processing and storage areas. The licensee shall retain the records of these findings for three years after the record is made.

\* \* \* \* \*

(13) Individuals not permitted by the licensee to enter protected areas without escort must be escorted by a watchman or other individual designated by the licensee while in a protected area and must be badged to indicate that an escort is required. In addition, the individual shall be required to register his or her name, date, time, purpose of visit and employment affiliation, citizenship, and name of the individual to be visited in a log. The licensee shall retain each log as a record for three years after the last entry is made in the log.

\* \* \* \* \*

(h) \* \* \*

(1) The licensee shall have a safeguard contingency plan for dealing with threats, thefts, and radiological sabotage related to the strategic special nuclear material and nuclear facilities subject to the provisions of this section. Safeguards contingency plans must be in accordance with the criteria in Appendix C to this part, "Licensee Safeguards Contingency Plans." Contingency plans must include, but need not be limited to, the response requirements in paragraphs (h)(2) through (h)(5) of this section. The licensee shall retain a copy of the current safeguards contingency plan as a record until the Commission terminates the license and, if any portion of the plan is superseded, retain the superseded material for three years after each change.

(2) The licensee shall establish and document response arrangements that have been made with local law enforcement authorities. The licensee shall retain documentation of the current arrangements as a record until

<sup>1</sup> Licensees subject to § 73.55 may modify their physical security plans to incorporate contingency plan information specified in Appendix C to this part. A physical security plan that contains all the information required in both § 73.55 and Appendix C to Part 73 satisfies the requirement for a contingency plan.



the Commission terminates each license requiring the arrangements and, if any arrangement is superseded, retain the superseded material for three years after each change.

96. In § 73.50, paragraphs (a)(3) and (4), (c)(5), and (g)(1) and (2) are revised to read as follows:

**§ 73.50 Requirements for physical protection of licensed activities.**

(a) \* \* \*

(3) The licensee shall establish, maintain, and follow written security procedures that document the structure of the security organization and detail the duties of guards, watchmen, and other individuals responsible for security. The licensee shall retain a copy of the current procedures as a record until the Commission terminates each license for which the procedures were developed and, if any portion of the procedures is superseded, retain the superseded material for three years after each change.

(4) The licensee may not permit an individual to act as a guard, watchman, armed response person, or other member of the security organization unless the individual has been trained, equipped, and qualified to perform each assigned security job duty in accordance with Appendix B, "General Criteria for Security Personnel," to this part. Upon the request of an authorized representative of the Commission, the licensee shall demonstrate the ability of the physical security personnel to carry out their assigned duties and responsibilities. Each guard, watchman, armed response person, and other member of the security organization shall requalify in accordance with Appendix B to this part at least every 12 months. This requalification must be documented. The licensee shall retain the documentation of each requalification as a record for three years after the requalification.

(c) \* \* \*

(5) Individuals not employed by the licensee must be escorted by a watchman, or other individual designated by the licensee, while in a protected area and must be badged to indicate that an escort is required. In addition, the licensee shall require that each individual not employed by the licensee register his or her name, date, time, purpose of visit, employment affiliation, citizenship, name and badge number of the escort, and name of the individual to be visited. The licensee shall retain the register of information

for three years after the last entry is made in the register. Except for a driver of a delivery or service vehicle, an individual not employed by the licensee who requires frequent and extended access to a protected area or a vital area need not be escorted if the individual is provided with a picture badge, which the individual must receive upon entrance into the protected area and return each time he or she leaves the protected area, that indicates—

- (i) Nonemployee-no escort required,
- (ii) Areas to which access is authorized, and
- (iii) The period for which access has been authorized.

(g) *Response requirement.* (1) The licensee shall have a safeguards contingency plan for dealing with threats, thefts, and radiological sabotage related to the special nuclear material and nuclear facilities subject to the provisions of this section. Safeguards contingency plans must be in accordance with the criteria in Appendix C to this part, "Licensee Safeguards Contingency Plans." The licensee shall retain a copy of the plan and each change to the plan as a record until the Commission terminates each license for which the plan was developed and retain the superseded materials for three years after each change.

(2) The licensee shall establish and document liaison with law enforcement authorities. The licensee shall retain the documentation of the current liaison as a record until the Commission terminates each license for which the liaison was developed and, if any portion of the liaison documentation is superseded, retain the superseded material for three years after each change.

97. In § 73.55, paragraphs (b)(1) and (3) (i) and (ii) and (4), (d)(6), and (h)(2) are revised to read as follows:

**§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.**

(b) *Physical Security Organization.* (1) The licensee shall establish a security organization, including guards, to protect his facility against radiological sabotage. If a contract guard force is utilized for site security, the licensee's written agreement with the contractor that must be retained by the licensee as a record for the duration of the contract will clearly show that:

- (i) The licensee is responsible to the Commission for maintaining safeguards

in accordance with Commission regulations and the licensee's security plan,

(ii) The NRC may inspect, copy, and take away copies of all reports and documents required to be kept by Commission regulations, orders, or applicable license conditions whether the reports and documents are kept by the licensee or the contractor,

(iii) The requirement in paragraph (b)(4) of this section that the licensee demonstrate the ability of physical security personnel to perform their assigned duties and responsibilities, includes demonstration of the ability of the contractor's physical security personnel to perform their assigned duties and responsibilities in carrying out the provisions of the Security Plan and these regulations, and

(iv) The contractor will not assign any personnel to the site who have not first been made aware of these responsibilities.

(3) \* \* \*

(i) Written security procedures that document the structure of the security organization and detail the duties of guards, watchmen, and other individuals responsible for security. The licensee shall maintain a copy of the current procedures as a record until the Commission terminates each license for which the procedures were developed and, if any portion of the procedure is superseded, retain the superseded material for three years after each change.

(ii) Provision for written approval of these procedures and any revisions to the procedures by the individual with overall responsibility for the security functions. The licensee shall retain each written approval as a record for three years from the date of the approval.

(4)(i) The licensee may not permit an individual to act as a guard, watchman, armed response person, or other member of the security organization unless the individual has been trained, equipped, and qualified to perform each assigned security job duty in accordance with Appendix B, "General Criteria for Security Personnel," to this part. Upon the request of an authorized representative of the Commission, the licensee shall demonstrate the ability of the physical security personnel to carry out their assigned duties and responsibilities. Each guard, watchman, armed response person, and other member of the security organization shall requalify in accordance with Appendix B to this part at least every 12 months. This requalification must be documented. The licensee shall retain



the documentation of each requalification as a record for three years after the requalification.

(ii) Each licensee shall submit a training and qualifications plan outlining the processes by which guards, watchmen, armed response persons, and other members of the security organization will be selected, trained, equipped, tested, and qualified to ensure that these individuals meet the requirements of this paragraph. The licensee shall maintain a current copy of the training and qualifications plan as a record until the Commission terminates each license for which the plan was developed and, if any portion of the plan is superseded, retain the material that is superseded for three years after each change. The training and qualifications plan must include a schedule to show how all security personnel will be qualified two years after the submitted plan is approved. The training and qualifications plan must be followed by the licensee 60 days after the submitted plan is approved by the NRC.

(d) \* \* \*

(6) Individuals not authorized by the licensee to enter protected areas without escort shall be escorted by a watchman or other individual designated by the licensee while in a protected area and shall be badged to indicate that an escort is required. In addition, the licensee shall require that each individual register his or her name, date, time, purpose of visit, employment affiliation, citizenship, and name of the individual to be visited. The licensee shall retain the register of information for three years after the last entry in the register.

(h) \* \* \*

(2) The licensee shall establish and document liaison with local law enforcement authorities. The licensee shall retain documentation of the current liaison as a record until the Commission terminates each license for which the liaison was developed and, if any portion of the liaison documentation is superseded, retain the superseded material for three years after each change.

98. In § 73.67, the paragraphs (c)(1); (d)(11); (e)(3)(iv), (e)(5), and (3)(6)(i), and the introductory text to (e)(4); (f)(4); and (g)(3)(i), (g)(4), and (g)(5)(i) are revised to read as follows:

**§ 73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance.**

(c) \* \* \*

(1) Submit a security plan or an amended security plan describing how the licensee will comply with all the requirements of paragraphs (d), (e), (f), and (g) of this section, as appropriate, including schedules of implementation. The licensee shall retain a copy of the effective security plan as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license for which the original plan was submitted. Copies of superseded material must be retained for three years after each change.

(d) \* \* \*

(11) Establish and maintain written response procedures for dealing with threats of thefts or thefts of these materials. The licensee shall retain a copy of the response procedures as a record for the period during which the licensee possesses the appropriate type and quantity of special nuclear material requiring this record under each license for which the original procedures were developed and, for three years thereafter. Copies of superseded material must be retained for three years after each change.

(e) \* \* \*

(3) \* \* \*

(iv) Establish and maintain written response procedures for dealing with threats of thefts or thefts of this material. The licensee shall retain a copy of the current response procedures as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license for which the original procedures were developed and copies of superseded material must be retained for three years after each change.

(4) Each licensee who arranges the physical protection of strategic special nuclear material in quantities of moderate strategic significance while in transit or who takes delivery of this material free on board (f.o.b.) the point at which it is delivered to a carrier for transport shall comply with the requirements of paragraphs (e)(1), (2), and (3) of this section. The licensee shall retain each record required by paragraphs (e)(1), (2), (3), and (4)(i) and (ii) of this section for three years after close of period licensee possesses special nuclear material under each license that authorizes these licensee activities. Copies of superseded material must be retained for three years after each change. In addition, the licensee shall—

(5) Each licensee who exports special nuclear material of moderate strategic significance shall comply with the requirements specified in paragraphs (c) and (e)(1), (3), and (4) of this section. The licensee shall retain each record required by these sections for three years after the close of period for which the licensee possesses the special nuclear material under each license that authorizes the licensee to export this material. Copies of superseded material must be retained for three years after each change.

(6) \* \* \*

(i) Comply with the requirements specified in paragraphs (c) and (e)(2), (3), and (4) of this section. The licensee shall retain each record required by these sections for three years after the close of period for which the licensee possesses the special nuclear material under each license that authorizes the licensee to import this material. Copies of superseded material must be retained for three years after each change.

(f) \* \* \*

(4) Establish and maintain response procedures for dealing with threats of thefts or thefts of this material. The licensee shall retain a copy of the current response procedures as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license for which the procedures were established. Copies of superseded material must be retained for three years after each change.

(g) \* \* \*

(3) \* \* \*

(i) Establish and maintain response procedures for dealing with threats or thefts of this material. The licensee shall retain a copy of the current response procedures as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license for which the procedures were established. Copies of superseded material must be retained for three years after each change.

(4) Each licensee who exports special nuclear material of low strategic significance shall comply with the appropriate requirements specified in paragraphs (c) and (g) (1) and (3) of this section. The licensee shall retain each record required by these sections for three years after the close of period for which the licensee possesses the special nuclear material under each license that authorizes the licensee to export this material. Copies of superseded material



must be retained for three years after each change.

(5) \* \* \*

(i) Comply with the requirements specified in paragraphs (c) and (g) (2) and (3) of this section and retain each record required by these paragraphs for three years after the close of period for which the licensee possesses the special nuclear material under each license that authorizes the licensee to import this material. Copies of superseded material must be retained for three years after each change.

\* \* \*

99. Section 73.70 is revised to read as follows:

#### § 73.70 Records.

Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records. Each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, 73.45, 73.46, 73.55, or 73.60 shall keep the following records:

(a) Names and addresses of all individuals who have been designated as authorized individuals. The licensee shall retain this record of currently designated authorized individuals for the period during which the licensee possesses the appropriate type and quantity of special nuclear material requiring this record under each license that authorizes the activity that is subject to the recordkeeping requirement and, for three years thereafter. Copies of superseded material must be retained for three years after each change.

(b) Names, addresses, and badge numbers of all individuals authorized to have access to vital equipment or special nuclear material, and the vital areas and material access areas to which authorization is granted. The licensee shall retain the record of individuals currently authorized this access for the period during which the licensee possesses the appropriate type and quantity of special nuclear material

requiring this record under each license that authorizes the activity that is subject to the recordkeeping requirement and, for three years thereafter. Copies of superseded material must be retained for three years after each change.

(c) A register of visitors, vendors, and other individuals not employed by the licensee pursuant to §§ 73.46(d)(1), 73.55(d)(6), or § 73.60. The licensee shall retain this register as a record for three years after the last entry is made in the register.

(d) A log indicating name, badge number, time of entry, and time of exit of all individuals granted access to a vital area except those individuals entering or exiting the reactor control room. The licensee shall retain this log as a record for three years after the last entry is made in the log.

(e) Documentation of all routine security tours and inspections, and of all tests, inspections, and maintenance performed on physical barriers, intrusion alarms, communications equipment, and other security related equipment used pursuant to the requirements of this part. The licensee shall retain the documentation for these events for three years from the date of documenting each event.

(f) A record at each onsite alarm annunciation location of each alarm, false alarm, alarm check, and tamper indication that identifies the type of alarm, location, alarm circuit, date, and time. In addition, details of response by facility guards and watchmen to each alarm, intrusion, or other security incident shall be recorded. The licensee shall retain each record for three years after the record is made.

(g) Shipments of special nuclear material subject to the requirements of this part, including names of carriers, major roads to be used, flight numbers in the case of air shipments, dates and expected times of departure and arrival of shipments, verification of communication equipment on board the transfer vehicle, names of individuals who are to communicate with the transport vehicle, container seal descriptions and identification, and any other information to confirm the means utilized to comply with §§ 73.25, 73.26, and 73.27. This information must be recorded prior to shipment. Information obtained during the course of the shipment such as reports of all communications, change of shipping plan, including monitor changes, trace investigations, and others must also be recorded. The licensee shall retain each record about a shipment required by this paragraph (g) for three years after the record is made.

(h) Procedures for controlling access to protected areas and for controlling access to keys for locks used to protect special nuclear material. The licensee shall retain a copy of the current procedures as a record until the Commission terminates each license for which the procedures were developed and, if any portion of the procedure is superseded, retain the superseded material for three years after each change.

100. In Appendix B to Part 73, Section I.C, E, and F and II.A, B, C, and E, and the introductory text of Section IV are revised to read as follows:

#### Appendix B—General Criteria for Security Personnel

##### Criteria

##### I. \* \* \*

C. Medical examinations and physical fitness qualifications—Guards, armed response personnel, armed escorts and other armed security force members shall be given a medical examination including a determination and written certification by a licensed physician that there are no medical contraindications as disclosed by the medical examination to participation by the individual in physical fitness tests. Subsequent to this medical examination, guards, armed response personnel, armed escorts and other armed security force members shall demonstrate physical fitness for assigned security job duties by performing a practical physical exercise program within a specific time period. The exercise program performance objectives shall be described in the license training and qualifications plan and shall consider job-related functions such as strenuous activity, physical exertion, levels of stress, and exposure to the elements as they pertain to each individual's assigned security job duties for both normal and emergency operations. The physical fitness qualification of each guard, armed response person, armed escort, and other security force member shall be documented and attested to by a licensee security supervisor. The licensee shall retain this documentation as a record for three years from the date of each qualification.

E. Physical requalification—At least every 12 months, central alarm station operators shall be required to meet the physical requirements of B.1.b of this section, and guards, armed response personnel, and armed escorts shall be required to meet the physical requirements of paragraphs B.1.b (1) and (2), and C of this section. The licensee shall document each individual's physical requalification and shall retain this documentation of requalification as a record for three years from the date of each requalification.

F. Documentation—The results of suitability, physical, and mental qualifications data and test results must be documented by the licensee or the licensee's



agent. The licensee or the agent shall retain this documentation as a record for three years from the date of obtaining and recording these results.

## II. Training and qualifications.

A. Training requirements—Each individual who requires training to perform assigned security-related job tasks or job duties as identified in the licensee physical security or contingency plans shall, prior to assignment, be trained to perform these tasks and duties in accordance with the licensee or the licensee's agent's documented training and qualifications plan. The licensee or the agent shall maintain documentation of the current plan and retain this documentation of the plan as a record for three years after the close of period for which the licensee possesses the special nuclear material under each license for which the plan was developed and, if any portion of the plan is superseded, retain the material that is superseded for three years after each change.

B. Qualification requirements—Each person who performs security-related job tasks or job duties required to implement the licensee physical security or contingency plan shall, prior to being assigned to these tasks or duties, be qualified in accordance with the licensee's NRC-approved training and qualifications plan. The qualifications of each individual must be documented and attested by a licensee security supervisor. The licensee shall retain this documentation of each individual's qualifications as a record for three years after the employee ends employment in the security-related capacity and for three years after the close of period for which the licensee possesses the special nuclear material under each license, and superseded material for three years after each change.

C. Contract personnel—Contract personnel shall be trained, equipped, and qualified as appropriate to their assigned security-related job tasks or job duties, in accordance with sections II, III, IV, and V of this appendix. The qualifications of each individual must be documented and attested by a licensee security supervisor. The licensee shall retain this documentation of each individual's qualifications as a record for three years after the employee ends employment in the security-related capacity and for three years after the close of period for which the licensee possesses the special nuclear material under each license, and superseded material for three years after each change.

E. Requalification—Security personnel shall be requalified at least every 12 months to perform assigned security-related job tasks and duties for both normal and contingency operations. Requalification shall be in accordance with the NRC-approved licensee training and qualifications plan. The results of requalification must be documented and attested by a licensee security supervisor. The licensee shall retain this documentation of each individual's requalification as a record for three years from the date of each requalification.

## IV. Weapons qualification and requalification program.

Qualification firing for the handgun and the rifle must be for daylight firing, and each individual shall perform night firing for familiarization with assigned weapon(s). The results of weapons qualification and requalification must be documented by the licensee or the licensee's agent. Each individual shall be requalified at least every 12 months. The licensee shall retain this documentation of each qualification and requalification as a record for three years from the date of the qualification or requalification, as appropriate.

## PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

101. The authority citation for Part 74 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

102. In § 74.31, the existing text of paragraph (d) is redesignated as (d)(1) and paragraph (d)(2) is added to read as follows:

### § 74.31 Nuclear material control and accounting for special nuclear material of low strategic significance.

(d) \* \* \*

(2) Records which must be maintained pursuant to this part may be the original or a reproduced copy or a microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures.

The licensee shall maintain adequate safeguards against tampering with and loss of records.

## PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

103. The authority citation for Part 75 is revised to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); the provisions of this part are issued under sec. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

104. The heading for § 75.6 is revised and a new paragraph (e) is added to read as follows:

### § 75.6 Maintenance of records and delivery of information, reports, and other communications.

(e) Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

105. In § 75.12, paragraphs (b)(1) and (4) are revised to read as follows:

### § 75.12 Communication of information to IAEA.

(b)(1) A licensee may request that information of particular sensitivity, which it customarily holds in confidence, not be transmitted physically to the IAEA. A licensee who makes such a request should, at the time the information is submitted, identify the pertinent document or part thereof and make a full statement of the reasons supporting the request. The licensee shall retain a copy of the request and all documents related to the request as a record until the Commission terminates the license for each installation involved with the request or until the Commission notifies the licensee that the licensee is no longer under the agreement. Superseded material must be retained for three years after each change is made.

(4) If a request is granted, the Commission will determine a location where the information will remain readily available for examination by the IAEA and will so inform the licensee. The licensee shall retain this information as a record until the Commission terminates the license for the installation involved with the request or until the Commission notifies the licensee that the licensee is no longer under the agreement. Superseded



material must be retained for three years after each change is made.

106. In § 75.21, paragraph (a) is revised to read as follows:

**§ 75.21 General requirements.**

(a) Each licensee who has been given notice by the Commission in writing that its installation has been identified under the Agreement shall establish, maintain, and follow written material accounting and control procedures. The licensee shall retain as a record current material accounting and control procedures until the Commission terminates the license for the installation involved with the request or until the Commission notifies the licensee that the licensee is no longer under the agreement. Superseded material must be retained for three years after each change is made.

**PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA**

107. The authority citation for Part 95 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

108. Section 95.11 is revised to read as follows:

**§ 95.11 Specific exemptions.**

The Commission may, upon application of any interested party, grant an exemption from the requirements of Part 95. Exemptions will be granted only if they are authorized by law and will not constitute an undue risk to the common defense and security. The licensee shall retain the documentation related to the request, notification, and processing of an exemption for three years beyond the period covered by the exemption.

109. Section 95.13 is revised to read as follows:

**§ 95.13 Maintenance of records.**

(a) Each licensee or organization granted security facility approval under this part shall maintain records prescribed within the part. These records are subject to review and inspection by NRC representatives during security surveys.

(b) Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the

microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

110. In § 95.25, paragraphs (a)(3), and (h) are revised to read as follows:

**§ 95.25 Protection of national security information and restricted data in storage.**

(a) \* \* \*

(3) When protective personnel are used, physical checks of security containers must be made as soon as possible after the close of each normal workday and at least once every eight hours thereafter during non-working hours. The licensee shall record the results of these checks and retain each record for three years after it is made.

(h) Unattended security container found opened: In the event that an unattended security container housing classified matter is found unlocked, the custodian or an alternate shall be notified immediately. The container must be secured by protective personnel and the contents inventoried as soon as possible but not later than the next workday. A report reflecting all actions taken must be submitted to the responsible Regional Office (see Appendix A, 10 CFR Part 73 for addresses) with an information copy to the NRC Division of Security. The licensee shall retain records pertaining to these matters for three years after completion of final corrective action.

**§ 95.33 [Amended]**

111. Section 95.33 is amended by changing "one year" to "three years" in the last sentence.

112. In § 95.37, paragraph (i) is revised to read as follows:

**§ 95.37 Classification and preparation of documents.**

(i) *Document which custodian believes is improperly classified or lacking appropriate classification markings.* If a person receives a document which, in his or her opinion, is not properly classified, or does not have appropriate classification markings, he or she shall immediately notify the sender and suggest to the originator the classification which he believes to be

appropriate. Whenever requested, this challenge of classification marking must be handled in a manner which will ensure the anonymity of the challenger. Pending final determination of proper classification, the document must be safeguarded in accordance with the procedures required for the highest classification in question. Where unauthorized disclosure may have occurred, a report in accordance with § 95.57 of this part is required. These reports must be retained for three years after final corrective action has been taken.

**§ 95.41 [Amended]**

113. Section 95.41 is amended by changing "two years" to "three years" in the last sentence.

114. Section 95.47 is revised to read as follows:

**§ 95.47 Destruction of matter containing national security information and/or restricted data.**

Documents containing National Security Information and/or Restricted Data may be destroyed by burning, pulping, or another method that ensures complete destruction of the information which they contain. The method of destruction must preclude recognition or reconstruction of the classified information. Any doubts on methods should be referred to the NRC Division of Security. If the document contains Secret National Security Information and/or Restricted Data a record of the subject or title, document number, if any, originator, its date or origination, its series designation and copy number, and the date of destruction must be signed by the person destroying the document and must be maintained in the office of the custodian at the time of destruction. These destruction records must be retained for three years after destruction.

**PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIALS**

115. The authority citation for Part 110 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

116. In § 110.53, paragraph (b) is revised to read as follows:

**§ 110.53 United States address, records, and inspections.**

(b)(1) Each licensee shall maintain records concerning his exports or imports. The licensee shall retain these



records for five years after each export or import except that byproduct material records must be retained for three years after each export or import.

(2) Records which must be maintained pursuant to this part may be the original or a reproduced copy or microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

Dated at Rockville, Maryland, this 13th day of May 1988.

For the Nuclear Regulatory Commission,  
Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88-11583 Filed 5-26-88; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 84-CE-03-AD; Amdt. 39-5940]

**Airworthiness Directives; Cessna 180, A182, 182, F182, FR182, R182, 185, 188, T188, 190, 195, 205, 206, P206, U206, TP206, TU206, 207, T207, 210 and T210 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final Rule.

**SUMMARY:** This Amendment revises and reissues Airworthiness Directive (AD) 84-10-01, Amendment 39-4863 (49 FR 21507, May 22, 1984), applicable to certain Cessna single engine airplanes, to allow for the installation of raised filler neck fuel caps as an equivalent means of compliance for those airplanes presently required to be equipped with a fuel system preflight placard. Incidents of engine power loss and accidents due to water contamination of the fuel system have occurred on some models of the above airplanes. The prescribed action identifies airplanes having bladder fuel cells which tend to retain water contamination, provides fuel tank drainage provisions and reduces the

possibility that water may enter and be retained in the fuel tanks.

**EFFECTIVE DATE:** July 5, 1988.

**ADDRESSES:** Cessna Service Information Letters SE79-45 dated September 10, 1979, SE82-34 dated July 23, 1982, SE84-8 dated March 16, 1984, SE84-9 dated March 23, 1984, and Cessna Single Engine Service Kit SK182-85 dated September 10, 1984, applicable to this AD may be obtained from Cessna Aircraft Company, Customer Service, P.O. Box 1521, Wichita, Kansas 67201. This information may also be examined at the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 84-CE-03-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Paul O. Pendleton, Aerospace Engineer, ACE-140W, Federal Aviation Administration, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4427.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include a revision to AD 84-10-01, Amendment 39-4863 was published on February 1, 1988, in the *Federal Register* (53 FR 2763). AD 84-10-01, Amendment 39-4863 (49 FR 21507, May 22, 1984), effective May 22, 1984, applicable to certain Cessna single engine airplanes required (among other things) that airplanes containing wrinkles in the fuel bladder tanks (other than fluid trapping diagonal corner wrinkles which were required to be removed or the bladder replaced) that trapped more than three fluid ounces to be placarded for specific fuel system preflight procedures. The proposal resulted from reports of accidents attributed to fuel contamination by water on certain single-engine Cessna airplanes. Investigation has revealed that many fuel cap installations have defective seals which will allow the entrance of water around the fuel cap seal. This amendment introduces reduced diameter fuel filler caps with raised filler necks to prevent precipitation from entering the fuel tanks even when the caps receive minimum maintenance and inspection.

Interested persons have been afforded an opportunity to comment on the proposal. Two comments were received on the proposed amendment. One comment received from a national aircraft users organization was in favor of the proposal as drafted.

A comment from the aircraft manufacturer was in opposition to removal of the preflight procedures

placard as it considered these procedures necessary for detection of fuel contamination from an unfiltered source. The FAA has determined that the primary source of fuel contamination on the airplanes affected by the proposal is from precipitation leaking past a deteriorated seal on an improperly maintained flush fuel cap installation. Fuel contamination from an unfiltered source is considered to be very rare in view of the quality control maintained by the fuel suppliers and retailers. Therefore, the FAA disagrees with the manufacturer's comments.

The specific serial numbers of the Cessna 190/195 models were identified after the NPRM was issued. The FAA has determined that clearly identifying the specific serial numbers of these airplanes fully meets the intent of the NPRM and does not impose any additional burden. Accordingly, an AD is being issued in accordance with the NPRM except for the addition of the airplane models and serial numbers.

If the airplane owner elects to install the raised filler neck fuel caps, the projected cost for parts and labor is \$200 per airplane. The cost of compliance with the AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of the Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the final evaluation prepared for this action is contained in the Regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.